DOCUMENT RESUME

ED 322 617 EA 022 132

TITLE	Current Student Aid and Other Related Regulations (Through September 1989).
INSTITUTION	Office of Student Financial Assistance (ED), Washington, DC.
PUB DATE	90
NOTE	325p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC13 Plus Postage.
DESCRIPTORS	Eligibility; Family Financial Resources; *Federal Programs; Federal Regulation; Financial Aid Applicants; Financial Needs; Higher Education; Loan Default; Loan Repayment; *Paying for College; Postsecondary Education; *Student Financial Aid; *Student Loan Programs; Work Study Programs
IDENTIFIERS	College Work Study Program; Higher Education Act 1965; Income Contingent Loan Program; Paul Douglas Teacher Scholarship Program; Pell Grant Program; Perkins Loan Program; Robert C Byrd Honors Scholarship Program; Stafford Loan Program; State Student Incentive Grants; Supplemental Educational Opportunity Grants

ABSTRACT

Final federal regulations through September 1989 for student financial aid and related concerns are listed in this publication. Regulations cover the following areas: family educational rights and privacy; Institutional eligibility under the Higher Education Act of 1965, as amended; student assistance general provision; Paul Douglas Teacher Scholarship Program; Robert C. Byrd Honors Scholarship Program; Income Contingent Loan Program; Perkins Loan Program; Supplemental Educational Opportunity Grant Program; College Work-Study Program; Guaranteed Student Loan Program (now called Stafford Loan Progam); Pell Grant Program; and State Student Incentive Grant Program. (LMI)

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United States
Department of
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ED322617

Current Student Aid and Other Related Regulations

(Through September 1989)

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Authority: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.

Subpart A-General

Sec. 99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that-

(1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988:

Name of Program	Authorizing Statute	Implementing Regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) (20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Programs.	The Rehabilitation Act of 1973, as amended (29 U.S.C. 700, et. seq.).	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children.	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College Housing	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, et. seq.)	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1)	Parts 700, 706-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section-

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

Sec. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

Sec. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to-

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally indentifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under Sec. 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are-

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include-

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are-

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that-

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are-

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to-

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

Sec. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

Sec. 99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

Sec. 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include-

(1) How the agency or institution informs parents and students of their rights, in accord with Sec. 99.7;

(2) How a parent or eligible student may inspect and review education records under Sec. 99.10, including at least-

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in Sec. 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under Sec. 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by Sec. 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under Sec. 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under Sec. 99.20, to obtain a hearing under Sec. 99.21(a), and to add a statement to the record under Sec. 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Authority: 20 U.S.C. 1232g(e) and (f))

(Approved by the Office of Management and Budget under control number 1880-0508)

Sec. 99.7 What must an educational agency or institution include in its annual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to-

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under Sec. 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under Sec. 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under Sec. 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e))

(Approved by the Office of Management and Budget under control number 1880-0508)

Subpart B-What are the Rights of Inspection and Review of Education Records?

Sec. 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under Sec. 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Sec. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

Sec. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

Sec. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are-

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records

after January 1, 1975, if-

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's-

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if-

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall-

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

Subpart C-What are the Procedures for Amending Education Records?

Sec. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) if the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Sec. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

Sec. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall-

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall-

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

Sec. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Sec. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D-May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

Sec. 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in Sec. 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses personally identifiable information from the student's education records.

(b) The written consent must-

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section-

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Sec. 99.35, to authorized representatives of-

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to-

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to-

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if-

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in Sec. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a) (1) through (11) of this section.

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1) and (b)(2)(B))

Sec. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include-

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Sec. 99.33(b), the record of the disclosure required under this section must include-

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Sec. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Sec. 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to-

(1) The parent or eligible student;

(2) A school official under Sec. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880-0508)

Sec. 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if-

(1) The disclosures meet the requirements of Sec. 99.31; and

(2) The educational agency or institution has complied with the requirements of Sec. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under Sec. 99.31(a)(11) or to disclosures to a parent or student under Sec. 99.31(a)(12).

(d) Except for disclosures under Sec. 99.31(a) (11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Sec. 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Sec. 99.31(a)(2) shall-

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless-

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under Sec. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if-

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

Sec. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must-

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if-

(1) The parent or eligible student has given written consent for the disclosure under Sec. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I))

Sec. 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of-

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

Subpart E-What are the Enforcement Procedures?

Sec. 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to-

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

Sec. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

Sec. 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1232g(g))

Sec. 99.64 What is the complaint procedure?

(a) A complaint filed under Sec. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.65 What is the content of the notice of complaint issued by the Office?

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section-

(1) Includes the substance of the alleged violation; and

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

(Authority: 20 U.S.C. 1232g(g))

Sec. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section-

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under Sec. 99.66(c), the Secretary may take an action authorized under 34 CFR Part 78, including-

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(g))

Appendix-Analysis of Comments and Changes

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Two issues were raised that cannot be addressed under any specific section of the regulations. In one case commenters raised the issue in the context of different sections of the regulations; in the other case the issues concerned a section that was removed from the regulations. The following is a discussion of those two issues:

o Release of records from another agency or institution.

Comment: Several commenters believed an agency or institution should not be required to provide a student a copy of a transcript or other records from another agency or institution unless the originating agency or institution is no longer in existence. Other commenters believed language should be included that would permit an educational agency or institution to decline a request for disclosure of a student's transcript or other records from another agency or institution, unless the originating agency or institution is no longer in existence.

Discussion: The records in question fall within the definition of education records in that they are directly related to a student and are maintained by an educational agency or institution. An agency or institution is required to provide a parent or an eligible student access to all records, including those transcripts and records it did not originate but that it maintains. This requirement is set forth in the section entitled, "What rights exist for a parent or eligible student to inspect and review education records?" The FERPA does not forbid or require an agency or institution to disclose records to a third party, nor would it prevent an agency or institution from establishing a policy of not disclosing to third parties records that had originated at another agency or institution.

Change: None.

o Waiver of Rights.

Comment: One commenter expressed concern about the removal of the section which set forth the conditions under which a parent or a student could waive any or all of his or her rights under the Act. While not endorsing nonstatutory waivers, the commenter believed that if nonstatutory waivers will continue to be recognized, the conditions governing those waivers are necessary in order to protect against any possible abuse. A second commenter supported the deletion of the general waiver provision, stating that there is no authority for waivers beyond the very narrow ones set forth in the statute.

Discussion: There was no statutory requirement for the waiver provision that was included in the regulations or the conditions under which nonstatutory waivers could be permitted. Therefore, the section was removed. However, in removing it, the Secretary does not intend to preclude educational agencies and institutions from establishing policies and conditions under which parents or students would be allowed to execute nonstatutory waivers.

Change: None.

The Secretary's discussion of the other comments received on the NPRM follows:

Section 99.1 To which educational agencies or institutions do these regulations apply?

Comment: One commenter questioned the specific legislative authority exempting programs from this part and the effect of exempting the programs.

Discussion: The statute appears in Part C of the General Education Provisions Act (GEPA). Prior to the establishment of the Department, Part C applied only to programs administered by the Commissioner of Education. The Commissioner had no authority over programs administered by the Assistant Secretary of Education and the Director of the National Institute of Education. For programs that were transferred to the Department under the Department of Education Organization Act (DEOA), the provisions of Part C continued to apply only to those programs administered by the Commissioner on the day preceding the effective date of the DEOA. Thus, FERPA does not apply to former National Institute of Education programs and the former National Center for Educational Statistics, Rehabilitation Services, National Institute of Disability and Rehabilitation Research, College Housing, and the Transition Program for Refugee Children.

Change: None.

Section 99.3 What definitions apply to these regulations?

Definition of "Directory Information".

Comment: Several commenters objected to the standard proposed in the definition of "directory information," stating there is no authority to broaden the term to include other information beyond that identified by Congress. Others stated that what may be considered an invasion of privacy by one person may not be so considered by another, which could result in inconsistency.

In contrast, an equal number of commenters stated that the standard is "most helpful," a "notable improvement" and "should be incorporated in the regulations." One commenter asked that distinguished academic performance or public service be included.

One commenter asked how the standard was developed. Others seemed to believe the standard would replace the items that have been designated by statute.

Discussion: The statute states that "directory information" relating to a student includes the following: * * * and then lists items which may be considered directory information. The Department had interpreted the word "includes" to mean the list was not prescriptive. To clarify that interpretation, the phrase "* * * and other similar information" was added to the definition in the regulations published in 1976.

The Secretary, in revising the regulations, decided it would be preferable to establish a standard for interpreting the scope of the legislation. The standard, together with the list of items, should provide sufficient guidance for educational agencies and institutions. The standard would permit an agency or institution to mention distinguished academic performance or public service as long as it had designated that information as directory information and the parent or student had not objected to such a disclosure.

Change: None.

Section 99.3 Definition of "Education Records".

Comment: A commenter believed the regulations are unclear on whether the definition of education records includes or excludes records relating to an individual in attendance at an educational agency or institution who is also employed as a result of his or her status as a "student."

Discussion: All records relating to a student who is also an employee of an educational agency or institution are included in the definition of education records if the student's employment is contingent on the fact that he or she is a student. For example, all records, including employment records, of a student enrolled in a work-study program are education records; likewise, all records of a student who,

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because he or she is a student, is employed by the educational agency or institution to serve as a teaching assistant, lecturer, or in some other capacity, are education records. Excluded from the definition of education records are the employment records of an employee-including, for example, a teaching assistant or lecturer-whose employment did not result from and does not depend on the fact that he or she may also be a student at the agency or institution, provided that these employment records are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose.

Change: The definition has been rewritten for clarity.

Comment: One commenter believed that personally identifiable information relating to events or matters that transpire after the student is no longer in attendance should be covered by the definition of education records. The commenter was concerned that the exclusion of this information from the definition is without statutory authority, that it would allow an educational agency or institution to collect negative allegations or information on a former student, and that the parent or student would have no protection against release of the information to third parties.

Discussion: The exclusion is intended to allow educational agencies and institutions and their alumni organizations to perform their traditional functions of fund-raising and publishing information concerning the accomplishments of alumni. Most, if not all, alumni organizations perform these functions in contact with the former students. Since the collection and use of negative information about alumni is not an accepted or usual practice of educational agencies or institutions, the Secretary has decided that any expectation of abuse is minimal and would be insufficient to justify imposing an additional regulatory burden.

Change: None.

Section 99.3 Definition of "Parent".

Comment: One commenter believed the definition of "parent" should specifically state that a school district must provide rights to both natural parents, custodial and noncustodial. Another commenter believed that the new section "What are the rights of parents?" should specifically state that "noncustodial" parents are included in the Act's coverage. The commenters believed the proposed additions would further clarify the rights of noncustodial parents.

Discussion: In revising the regulations, the Secretary recognized the need to clarify the rights of custodial and noncustodial parents. Therefore, the new section was added to state specifically that the agency or institution shall give full rights under the law to either parent unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody, that specifically revokes these rights. The Secretary believes this new section provides sufficient clarification and that the definition of "parent" should remain as it appeared in the proposed regulations.

Change: None.

Section 99.3 Definition of "Student".

Comment: One commenter stated that the inclusion of "former student" in the definition of "student" improves the definition. Two other commenters appeared to believe that the purpose of the revision was to extend the law's coverage to include former students.

Discussion: Former students are covered under the statute's definition of student and have been entitled to the same rights as students in attendance since the law's passage. The intent of the revision is to make this clear in the definition section of the regulations. Those specific provisions of the regulations where rights are limited to current students are clearly stated in the revised regulations. See Sec. 99.7 regarding annual notification, Sec. 99.34 regarding disclosure to other educational agencies and institutions and Sec. 99.37 regarding directory information.

Change: None.

Section 99.5 What are the rights of eligible students?

Comment: Two commenters believed the paragraph that was removed from this section, which is entitled "Student Rights" in the current regulations, should be reinserted. The paragraph stated that the rights of an eligible student are not affected by a provision in the regulations that allows an agency or institution to disclose information to the parents of such a student without the student's written consent. One of these commenters believed the reference should be reinserted in order to make clear the fact that the student's right to have access to his or her education records is not affected by the student's status as a dependent. The other commenter believed the removal of the reference may result in increased pressure on institutions to grant a parent's request for access without formally establishing that the student is in fact a dependent as defined in section 152 of the Internal Revenue Code.

Discussion: This section of the regulations clearly states that when a student becomes an eligible student, all of the FERPA rights transfer from the parents to the student. The section of the regulations entitled "Under what conditions is prior consent not required to disclose information?" provides that an agency or institution may disclose information to the parents of a dependent student without the student's consent; the provision does not require the school to do so. The paragraph that is being removed was not intended to have any effect on an agency's or institution's decision on whether to grant the parent's request for information. Nor was it intended to affect an agency's or institution's policies in establishing that a student is a dependent as defined in section 152 of the Internal Revenue Code.

Change: None.

Comment: Three commenters believed educational agenices and institutions should be required to allow the parents of dependent students to inspect and review the education records of the student. Another commenter believed that even allowing educational agencies and institutions to afford the parents the opportunity to have access undermined the intent of the law by removing the student's right to have control over the disclosure. This commenter believed that specific procedures for release of information to parents in specific circumstances were needed.

Discussion: The statute clearly provides that the parents' rights afforded by the law transfer to the student when the student reaches age 18 or is attending an institution of postsecondary education. The statute also clearly provides that an educational agency may disclose the education records of a dependent student to the parents of the student without the student's consent. The Secretary has no authority to change these statutory provisions. He finds nothing in the statute to indicate that Congress intended the Department to develop procedures such as the one commenter suggested and believes that to do so would impose an unnecessary regulatory burden.

Change: None.

Comment: A commenter believed the regulations should clarify the status of handicapped students over the age of 18 whose handicapping condition is such as to affect their ability to understand and/or exercise their rights under the Act.

Discussion: The Secretary has carefully considered this question in light of the fact that at age 18 the rights transfer from the parent to the student. He has decided that a student who is so severely handicapped as to prevent the student from exercising his or her rights under the Act would in most cases be under the legal care or guardianship of another person or entity. In the absence of a court's order of guardianship, the Secretary believes it would be reasonable to presume that the parents of such a student are the persons who are in the best position to act on behalf of the student. Therefore, the Secretary has decided that no specific provision in the regulations is necessary.

Change: None.

Comment: One commenter was concerned about the statement in the proposed regulations that provides that an individual does not have rights in components of an "agency or institution at which the individual has never been in attendance." The commenter questioned whether a student who is enrolled in one component of a university and takes one course in another component is considered to be a student in attendance at, and with rights in, both components. The commenter believed the provision could result in the disclosure of records by a component of the institution in which the student has never been in attendance.

Discussion: In revising the regulations, two significant phrases were unintentionally omitted from the statement. The statement should have read, "If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission but has never been in attendance." Concerning the commenter's specific question, if an individual applied for but was not admitted to a component, the individual would have no rights with regard to his or her application for admission to that component. This result is consistent with extensive legislative history on the subject. However, if an individual took a course in the component to which he or she had been denied admission, that individual would have FERPA rights with respect to that course, but still would not have rights with respect to the denied application for admission to that component.

Change: The phrases "is or has been in attendance at" and "to which the individual has applied for admission" have been added.

Comment: A commenter was concerned that an institution might misinterpret the language in this provision to mean that a student would not have rights with respect to records which happen to be maintained in a component other than the component in which the student is enrolled.

Discussion: A student cannot be denied access or other rights with respect to his or her education records, regardless of location.

Change: None.

Comment: A commenter suggested that the words "his or her parent" in this section be changed to "the parents" and the words "parents of students" be changed to "parents."

Discussion: In revising the regulations, the Secretary changed the definition of "parent" to eliminate the need to refer to "the parent of the student" or "his or her parent" throughout the regulations. The need for changing the terminology in this section was overlooked.

Change: The terminology has been revised to read "parents."

Section 99.6 What information must an educational agency's or institution's policy contain?

Comment: One commenter believed an educational agency or institution should be required to include in its policy a statement that grades may not be appealed.

Discussion: The legislative history of FERPA indicates that the Act was not intended to be used to replace previously established procedures to appeal the grade given the student's performance in a course. However, given the discretion delegated to educational agencies or institutions in implementing FERPA, an agency or institution might choose to permit parents of students or eligible students to use FERPA procedures to challenge a grade. Therefore, the Secretary has decided that it is not necessary or appropriate to require educational agencies and institutions to state in their policies that a student's grade may not be appealed.

Change: None.

Comment: Another commenter expressed agreement with the revisions made in this section with regard to the written policy each educational agency or institution must adopt. However, the commenter seemed to believe that the regulations required an educational agency or institution to publish its policy as part of its annual notification and that this requirement was being removed in revising the regulations.

Discussion: The only revisions made in this section, which was previously numbered 99.5, were made for the purpose of clarification. Neither the current nor the revised regulations require that an educational agency or institution include its policy in the annual notification. Both regulations require that the annual notification include a statement of where the policy may be obtained.

Change: None.

Section 99.7 What must an educational agency or institution include in its annual notification?

Comment: One commenter believed the intent of the law is that educational agencies and institutions be required to "make notification available" to parents or students rather than to "notify" parents or students. Therefore, the commenter suggested that the word "notify" in the first paragraph of the section be replaced by the words "make notification available."

Discussion: The statute requires educational agencies and institutions to inform the parents or the eligible students of the rights accorded them by the Act. In order to inform the parents or the eligible students of their rights, educational agencies and institutions would be required to notify, not simply make notification available.

Change: None.

Comment: One commenter pointed out that the revised regulations would require educational agencies and institutions to notify parents of students in attendance "and" eligible students in attendance whereas the former regulations required that parents "or" students be notified.

Discussion: The use of the word "or" can connote the idea that an educational agency or institution has an option either to notify parents of all students-whether the students are eligible or not-or to notify only eligible students. Conversely, use of "and" could be construed to require disclosure to eligible students and all parents, whether or not they were the parents of noneligible students. The word "and" is used in this section with the understanding that in the phrase "parents and eligible students" the word "parents" means the parents of students who are not eligible students. Thus, the requirements in question apply both to eligible students and to parents of students who are not eligible students.

Change: None.

Comment: One commenter, writing on behalf of an institution of higher education, believed language should be inserted to relieve notification requirements with respect to parents who reside outside the continental United States. The commenter also believed agencies and institutions should not be required to notify parents of students who have a primary or home language other than English if the student has demonstrated the minimal command of the English language required for admission to the institution.

Discussion: The statute requires that educational agencies or institutions inform the parents or students of their rights. It does not, however, require that the parents or students be notified individually; a general notification, such as by publication in a newsletter or college bulletin, is adequate. The requirement that an agency or institution notify parents of students who have a primary or home language other than English applies only to elementary and secondary schools. Institutions of higher education are not required to inform parents of rights, just eligible students.

Change: None.

Comment: One commenter asked for information on how educational agencies and institutions are to notify former students of their rights and the agency's or institution's policies.

Discussion: Both the current regulations and the revised regulations provide that notification must be given only to parents of students in attendance or eligible students in attendance. The notification of rights and policy need not be provided to former students or their parents. In any case, as noted in the discussion of the preceding comment, a general notification by publication in a newsletter or college bulletin is adequate to satisfy the statutory and regulatory requirements.

Change: None.

Section 99.10 What rights exist for a parent or eligible student to inspect and review education records?

Comment: A commenter believed there was a need to clarify the requirement that an educational agency or institution comply with a request for access to records within "a reasonable period of time, but in no case more than 45 days after it has received the request." The commenter indicated that the regulations should emphasize that it is quite often reasonable to provide access within a shorter period of time than the 45-day limit.

Discussion: The Secretary finds that, in practice, schools often provide access within a period of time which is considerably shorter than the 45-day limit. He has decided that the phrase "but in no case more than 45 days" serves to emphasize that 45 days is the maximum time allowed for compliance.

Change: None.

Comments: Two commenters were of the opinion that parents should be entitled to obtain copies of the education records of their children. Both commenters indicated that having copies of the records would provide protection against a school's losing or misplacing records. One of the commenters believed the provision would be particularly beneficial for families who move to a new location, in the event the education records are misplaced or lost in transit or in the event transfer of the records is delayed. The other commenter believed such a provision would also relieve schools of the necessity of determining when a denial of copies would effectively result in a denial of access.

Discussion: Both the current and the revised regulations set forth conditions which apply to the disclosure of information to other educational agencies and institutions in which a student seeks or intends to enroll. One of the conditions is that an agency or institution which transfers records to another agency or institution must give the parent or eligible student, upon request, a copy of the record that was disclosed. This is required by statute.

The second case in which an educational agency or institution must provide copies is when a parent or student gives a written consent for the disclosure of information from the student's education records and requests a copy of the records disclosed. This is also a statutory requirement.

The current and the revised regulations also require an educational agency or institution to provide copies of education records if a failure to do so would effectively result in a denial of access, and to include in their written policy a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of education records. These requirements, while not specifically stated in the statute, are necessary to implement the statutory requirement that an educational agency or institution shall not have a policy of denying, or effectively preventing, a parent or student the right to inspect and review the education records of the student.

The Secretary has decided that it would impose an unnecessary burden to require educational agencies or institutions to provide copies except as is now required by statute and the implementing regulations. However, nothing in the statute or the regulations would preclude an educational agency or institution from adopting a policy of providing copies in other cases, if it so chooses.

Change: None.

Comments: Two commenters believed the provision that prohibits educational agencies and institutions from destroying records if there is a pending request for access should be expanded. Both commenters believed educational agencies and institutions should be required to notify parents prior to destruction of documents and afford them an opportunity to inspect and review or obtain the records.

Discussion: The Secretary has decided that such a requirement would impose an unnecessary burden on educational agencies and institutions. In many cases, State law or agency or institutional policies and procedures prescribe a period of time in which education records are required to be maintained. Nothing in the Act or these regulations would preclude an educational agency or institution from implementing a policy of notifying parents or eligible students prior to the destruction of any education records.

Change: None.

Comments: One commenter expressed concern about the provision that accords an eligible student the right to have his or her medical treatment records reviewed by a physician or other appropriate professional of the student's choice. The commenter questioned whether postsecondary institutions would be obligated to verify the credentials of the professional chosen by the student.

Discussion: This provision is based on a requirement in the statute. The provision describes the rights of inspection and review of education records in the revised regulations. Neither the statute nor the regulations prescribe any procedures for verification.

Change: None.

Comments: One commenter believed that a provision in this section lends support to parents who claim they should have the right to have access so long as they are supporting the student in college. The provision in question reads, "* * * each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student." It is the phase "parent or eligible student" that the commenter believed lends support to the parent's claim.

Discussion: The word "parent" in the phase "parent or eligible student" means the parent of a student who is not an eligible student. Thus, at the college level, FERPA affords the eligible student the right of inspection and review. FERPA does not, however, prohibit an educational agency or institution from disclosing the education records of an eligible student to the parents of the eligible student if the student is a dependent child as defined in section 152 of the Internal Revenue Code of 1954. The provision which allows educational agencies and institutions to disclose information to parents of eligible students is set forth in the section entitled, "Under what conditions is prior consent not required to disclose information?"

Change: None.

Section 99.11 May an educational agency or institution charge a fee for copies of education records?

Comments: One commenter believed fees for copying should be limited to the actual cost of reproduction. The commenter believed that unless fees are limited to the actual cost of copying, an educational agency or institution might incorporate into the fee costs for search and retrieval of education records. A second commenter indicated that an educational agency or institution should be allowed to charge a fee for search and retrieval, if done manually, and for any other costs incurred in providing copies.

Discussion: Educational agencies and institutions are entitled to charge reasonable fees for the actual cost of reproduction, secretarial time, and postage. The Secretary considered whether to include a provision to allow educational agencies and institutions to charge a fee for search and retrieval. He decided that providing parents or students access to education records is a function that is generally a part of the accepted and normal business of educational agencies and institutions.

Change: None.

Section 99.12 What limitations exist on the right to inspect and review records?

Comment: One commenter was concerned about the removal of the provision that required educational agencies and institutions to document the confidentiality of letters and statements of recommendation that were placed in the education records of a student prior to January 1, 1975. The commenter believed that the requirement provided the only reliable way of determining that a letter or statement was indeed "confidential."

Discussion: The provision was removed because it placed an undue burden on agencies and institutions to expect that they would be able to document the confidentiality of letters or statements that were solicited or sent and retained more than 10 years ago.

Change: None.

Comment: A commenter raised a question relating to the provision that an educational agency or institution cannot require a waiver as a condition for admission to or receipt of a service or benefit from the agency or institution. With that in mind, the commenter asked whether a placement office would be denying a service or benefit to a student by advising the student that a professor will not write a letter of recommendation or an employer will not accept a letter of recommendation, or both, unless the student signs a waiver.

Discussion: A faculty member's refusal to write a reference without a waiver would be considered an action of that individual and not of the agency or institution. A placement office would not be denying a service or benefit by advising the student of the faculty member's or employer's refusal.

Change: None.

Comment: One commenter believed the provision in this section that allows an applicant for admission to waive his or her rights under certain conditions should be removed.

Discussion: The provision is required by statute. Therefore, the Secretary has no authority to remove it from the regulations.

Change: None.

Section 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

Comments: Two commenters believed that a parent or student should have the option of inserting a statement in an education record without first going through the hearing process that is provided in this section. The commenters interpreted the statute as intending that an educational agency or institution must provide a parent or a student both an opportunity for a hearing and an opportunity to insert a statement in the record. They believed the regulations misapply the statute's intent by requiring that a parent or student go through the hearing process before exercising the right to place a statement in the record. One of the commenters stated that this requirement can result in extensive delay in cases where a parent's or student's interest in inserting a clarifying statement in the record is time-sensitive.

Discussion: The statute provides that the parents or students must be afforded "an opportunity for a hearing * * * to challenge the content of [the] records and to provide an opportunity for the correction or deletion of [data] and to insert into [the] records a written explanation * * * respecting the content of [the] records." the statute is not definitive on the question of whether the parent's or student's right to place a statement in the records exists independent of the hearing process. However, the Secretary believes that the order in which the hearing and the statement are addressed in the statute indicates that the Congressional intent was that a parent or student should exhaust the administrative remedy afforded by the hearing process before exercising the right to place an explanatory statement in the record.

After considering this issue, the Secretary has decided that to require a hearing would be burdensome in cases where an educational agency or institution and the parent or student are clearly in agreement that an explanatory statement alone is the appropriate remedy. If one or the other of the two parties disagrees, then the parents or eligible student must exhaust the remedy afforded by the hearing process before entering an explanation in the record. The Secretary finds no reason to regulate on this issue since it may be resolved by the two parties directly involved.

The Secretary has also considered whether an agency or institution could be required to allow a parent or student to insert a statement in the record if the parent or student considers the matter to be time-sensitive. There is no FERPA provision which would require an agency or institution to expedite the process in a situation where a parent or student believes time is a factor. The explanatory statement provided for in the regulations is not intended to serve any purpose other than to document the parent's or student's final position on the accuracy of an education record.

Change: None.

Comment: One commenter believed the statement that a parent or student inserts in the education record could provide an unlimited opportunity to enter a statement of disagreement. The commenter suggested that such a statement should be limited to a declaration of disagreement and that the educational agency or institution should have the right to refuse to include information beyond such a declaration.

Discussion: The statute requires that a parent or student be afforded an opportunity to insert into the records "a written explanation * * * respecting the content of [the disputed] records." The Secretary has no authority to require that the statement be limited to a declaration of disagreement.

Change: None.

Comment: One commenter suggested an amendment of the provision which requires that an educational agency or institution disclose a parent's or a student's explanatory statement whenever it discloses the portion of the record to which the statement relates. The commenter believed that educational agencies or institutions with complex or automated recordkeeping systems should not be required to provide a copy of the explanatory statement along with a disclosed record. Instead, the commenter believed agencies or institutions should be allowed to include on the disclosed record a reference to the fact that the explanatory statement exists and will be made available on request.

Discussion: The statute requires that the statement be maintained with the record. The Secretary believes the regulatory requirement that the statement be disclosed whenever the contested record is disclosed is necessary to meet the statutory intent.

Change: None.

Section 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

Comment: One commenter believed that it seemed inappropriate to require that a student's written consent state the purpose of the release. The commenter seemed to believe that the written consent is intended to be a mechanism to restrict what he assumes is a student's right to have information released from his or her own education records. In interpreting the provision in this way, the commenter believed that requiring the student to state the purpose of the release limited his right to have the records released.

Discussion: The statute requires that the purpose of the release be stated in the written consent; therefore, the Secretary has no authority to remove the provision. The purpose of the written consent is to document that the student consented to a disclosure of information from his or her education records; the consent is not intended in any way to restrict any of a student's rights.

Change: None.

Comment: Another commenter indicated that educational agencies and institutions should be able to accept requests by telephone with proper safeguards.

Discussion: The commenter did not specify whether he or she was referring to requests made by a third party for disclosure of information from a student's education records or a request made by a parent or eligible student to disclose information to a third party. Concerning the former, the regulations do not require that a request be in writing in order for an agency or institution to disclose information pursuant to one of the statutory exclusions permitting disclosure without consent. Concerning the latter, the statute requires an agency or institution to obtain written consent of a parent or eligible student before disclosing information to a third party.

Change: None.

Section 99.31 Under what conditions is prior consent not required to disclose information?

Comment: A commenter believed the term "legitimate educational interest" should be more definitive. The commenter indicated that some institutions interpret the term too broadly while others interpret it too narrowly.

Discussion: The Secretary believes the Department could not make a definitive statement of legitimate educational interest that would apply to each school district and college and university across the nation. Each educational agency and institution must establish its own criteria, according to its own procedures and requirements, for determining when its school officials have a legitimate educational interest in a student's records.

Change: None.

Comment: Two commenters disagreed with the proposal to add language to clarify that education records may be disclosed without consent to a postsecondary institution in which a student seeks or intends to enroll. The commenters believed the addition expanded the scope of the statute and that the statutory purpose of the provision was to facilitate the transfer of records when a student moves from one public school system to another. In the case of postsecondary institutions, the commenters believed it would be more appropriate to require consent of the parent or the student before transferring records.

Discussion: The current regulations did not clearly specify that postsecondary educational institutions are covered by the exception. The provision has been applicable in practice to postsecondary institutions since enactment of the law. The change to this provision clarifies that "schools" include institutions of postsecondary education.

Change: None.

Comment: A commenter asked that the definition of "financial aid" be explicitly broadened to include all debts owed to an institution as a result of the student's participation in the institution's programs. The commenter strongly believed that Congress did not intend that an institution should be restricted by the law from collecting any and all debts owed it by students.

Discussion: The statute was intended to provide parents or students some control over the disclosure of information from the student's education records. With certain specified exceptions, including the provision with regard to financial aid, information cannot be disclosed without a student's written consent. The statute refers to disclosure "in connection with a student's application for, or receipt of, financial aid." In that context, the definition of financial aid could not be broadened to include other debts owed the institution.

Change: None.

Comment: One commenter, a representative of a State Department of Education, believed a provision should be included to acknowledge that State law may in some cases be more protective of students' privacy than Federal law, particularly in restricting the conditions under which information can be disclosed without the parent's written consent.

Discussion: The current and revised regulations provide that a State is not prevented from further limiting the number or type of State or local officials to whom disclosures may be made without consent. The regulations also state under the section "What are the rights of eligible students?" that the law and regulations "do not prevent educational agencies or institutions from giving students rights in addition to those given to parents of students." The Secretary has decided that no regulatory purpose would be served by including a provision such as suggested by the commenter.

Change: None.

Comment: A commenter suggested a change in the provision that allows disclosure "to organizations conducting studies for, or on behalf of, educational agencies or institutions [if] the study is conducted in a manner that does not permit personal identification of parents or students by individuals other than representatives of the organization * * *." The commenter believed the word "by" should be changed to "to".

Discussion: The word "by" is used in the statute, and the Secretary believes the meaning is clear.

Change: None.

Comment: None.

Discussion: In the notice of proposed rulemaking (NPRM) for these regulations the phrase "parents or students" was used in Sec. 99.31(a)(6)(ii)(A). However, the statute requires organizations that receive information under this exception to the consent requirement to protect the information "in such a manner as will not permit the personal identification of students and their parents * * *."

Change: The word "or" has been changed to "and" to ensure that both groups are fully protected.

Comment: A commenter believed the educational agency or institution should be relieved in some cases of the requirement of making a reasonable effort to notify a parent or student in advance of compliance with a subpoena. The commenter indicated that in legal actions to which the student is a party, the court process itself requires that any subpoena be served on the opposing party, thereby making any notification effort by the educational agency or institution superfluous.

Discussion: The statutory language requires that parents or students be notified of "all such orders or subpoenas" in advance of compliance. The language was modified in the course of promulgating the current regulations to require that the agency or institution "make a reasonable effort to notify * * *." The modification was made in recognition that it would be difficult in many cases for the agency or institution to comply with the statutory requirement and in the belief that the modification was in accord with the Congressional intent.

The Secretary has decided that he has no authority to relieve educational agencies or institutions of the statutory requirement that parents and students be notified of "all such orders or subpoenas." The Secretary has also decided that even in cases where the parent or student brings the action, the notification serves to assure that the party serving a subpoena is in fact acting on behalf of the parent or student.

Change: None.

Comment: One commenter suggested that a condition be added to allow a postsecondary institution to contact a parent of an eligible student without the student's consent if the institution suspects that the student has a physical or emotional problem of which the university believes the parent may be unaware and that affects the student's academic or campus life.

Discussion: The Secretary has no authority to regulate an exception to the statutory requirement that at age 18 the rights afforded by FERPA transfer from the parent to the student. However, if an institution determined that the circumstances of a situation were such as to constitute a health or safety emergency and if the university decided that the parent is the party who is in the best position to deal with the emergency, then the disclosure could be made under the section of the regulations that provides for disclosure in those emergencies.

Change: None.

Comment: Four commenters believed a condition should be added to permit disclosure without a student's consent if the agency or institution has reason to believe that the student has provided inaccurate or misleading information concerning his or her academic record to another educational agency or institution, to an employer, to a professional association, or to a governmental agency to whom the student applies for benefits or services.

Another commenter believed educational agencies and institutions should be allowed to disclose information without prior written consent to government officials, including U.S. Senators and Representatives, State legislators, and governors, who have been contacted by a parent or student who believes his or her rights under this law have been violated. The commenter indicated that the agencies or institutions are unable to respond to, or to defend themselves against, the parent's or student's allegations because they cannot release information to the government officials without the parent's or student's written consent.

Discussion: The Secretary understands the concerns of the commenters and has carefully considered whether provisions could be included in the regulations to address the problems. He has decided that the statute is specific in stating the conditions under which disclosure can be made without consent and that he has no authority to include the provisions proposed by the commenters.

Change: None.

Section 99.32 What recordkeeping requirements exist concerning requests and disclosures?

Comment: A commenter suggested that the term "list" be changed to "record" in this section. The commenter indicated that as long as a record of requests for and disclosures of information is maintained, the form of the record is irrelevant.

Discussion: The Secretary did not intend to prescribe the form of the record; the intent was to suggest a convenient way to maintain the information. However, in order to conform to the statutory language, the term "record" will be used.

Change: The term "record" has been substituted for "list."

Comment: One commenter stated that keeping a record of requests for disclosure is impractical and implies that a record must be kept even for requests that are denied. The commenter also believed it impractical to require the record of disclosure to be kept with the education records of the student, inasmuch as most institutions maintain records in computerized formats. Another commenter believed maintaining a record of disclosures without consent is self-incriminating. The commenter also stated that institutions should be free to establish their own retention schedule.

Discussion: The statute requires each educational agency and institution to maintain a record, kept with the education records of each student, that will indicate all parties who have requested or obtained access to a student's education records, including those parties to whom the statute permits disclosure without consent. While the statute states that the record should be kept with the education records of a student, it does not intend to require the agency or institution to keep it in one file or in one location. However, it does intend to require the agency or institution to make the record available to a parent or student as part of the parent's or student's general access to the education records. Since parents or students should be able to learn of those parties interested in the records, the record of disclosure should be maintained as long as the agency or institution maintains records on the student.

Change: None.

Comment: A commenter asked whether the placement office of an educational agency or institution would be required to keep a list (record) of all parties to whom a student's credential files were sent if the student had given a blanket consent to release his or her education records without specifying the individual parties.

Discussion: The statutory and regulatory language require an agency or institution to maintain a record of each disclosure.

Change: None.

Comment: One commenter questioned the recordkeeping requirement concerning disclosure and redisclosure of information to parties if prior written consent for disclosure is not required. An educational agency or institution may disclose information to a party if consent is not required with the understanding that that party may redisclose the information to another party to whom information can be disclosed without consent. The agency or institution must keep a record of the parties to whom the disclosure and redisclosures are made and the legitimate educational interests all parties have in the records. The commentor believed the recordkeeping requirement places an undue burden on institutions and that most reasonable approach is to assert that no information may be redisclosed.

Discussion: The Secretary did not intend any change in the recordkeeping requirement. At the time the final regulations were issued in 1976, the Department had considered whether student consent should be required if disclosure by a party excepted from the consent requirement is to another party excepted from the consent requirement-even though the institution could disclose information without consent to either excepted party. The Secretary considered, for example, whether an institution that disclosed information to the Department of Education under the Guaranteed Student Loan Program as permitted by the "financial aid" exception, would be required to tell the Department of Education not to make a future disclosure of that information to the bank that loaned the money under the program-even though the bank could obtain the information directly from the institution under the same exception.

If the Department of Education could disclose the information freely to other excepted parties, there would be no harm done to the consent requirement. However, the student would no longer have a means to discover all of the parties outside the institution who had had access to his or her records without consent. To remedy this problem, the Secretary authorized an institution to disclose information to excepted parties with the understanding it would be redisclosed to other excepted parties, but only if a record of access were kept for all of those parties.

The Secretary did not intend to impose a recordkeeping burden on educational institutions. Rather, the intent was to give a better understanding of the disclosure and recordkeeping requirement with regard to excepted parties.

Section 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

Comment: A commenter believed an example should be inserted in this section to specify that the phrase "is enrolled in or receives service from the other agency or institution" encompasses consortia, cross-enrollment, joint-enrollment, work-study, and coordination of such programs among postsecondary institutions and participating agencies and institutions.

Discussion: The Secretary believes the provision, as it now stands, can clearly be construed to encompass the examples included in the comment.

Change: None.

Comment: None.

Discussion: The proposed regulations changed the definition of student to include former students in order to make clear that most rights accorded students in attendance also apply to former students. In cases where the provisions of a section do not apply to former students, the term "students in attendance" is used. The provision in this section that, in the proposed regulations, stated "an educational agency or institution may disclose an education record of a student to another educational agency or institution if the student is enrolled in or receives services from the other agency or institution" would extend the provision beyond the statutory authority and would indicate that an agency or institution could disclose information on former students without consent to another agency or institution if the former student is enrolled in or receives services from the other agency or institution.

Change: The provision has been clarified to state that it applies only to students in attendance.

Section 99.36 What conditions apply to disclosure of information in health and safety emergencies?

Comments: One commenter believed that the regulations, in stating that the provisions of the section "shall be strictly construed," rightly leaves it to the educational agency or institution to develop its own definition of emergency. The commenter viewed the revision as helpful to educational agencies and institutions and as a step to assure an appropriate deregulation and an appropriate recordkeeping process within the institution on defining when an emergency may arise. Another commenter believed the factors that were removed from the health and safety emergency section in revising the regulations should be reinserted. The commenter believed that the statute specifically directs the Secretary to issue regulations concerning disclosure in a health or safety emergency and also believed that the criteria provided useful guidance.

Discussion: The statute, in setting forth the conditions in which personally identifiable information from an education record or records can be disclosed without a parent's or student's consent, states that "[such a disclosure may be made], subject to regulations of the Secretary in connection with an emergency, [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons." The regulations required that educational agencies or institutions include four specific criteria in the factors to be taken into account in determining whether personally identifiable information from the education records of a student could be disclosed under the section.

The Secretary based his decision to remove the nonstatutory criteria from the regulations on his belief that educational agencies and institutions are capable of making those determinations without the need for Federal regulation. It is the Secretary's opinion that Congress did not intend to require that regulations be promulgated that would impose burdensome requirements on agencies and institutions. He believes the requirement that agencies and institutions strictly construe the provision fully meets the Congressional intent. Nothing in the statute or legislative history prohibits an agency or institution from considering the four specific criteria that have been removed.

Change: None.

Section 99.37 What conditions apply to disclosing directory information?

Comment: One commenter thought the use of the word "and" in the text of the first paragraph under the section was incorrect.

Discussion: In the proposed regulations the word "and" was inserted in place of the word "or" in the phrase "* * * parents of students in attendance and eligible students in attendance * * *." However, replacing the word "or" with the word "and" does not remove all possibility for misinterpreting the provision. As clarification, we note that in the phrase "parents of students in attendance," the word "students" means students who are not eligible students. Thus, the educational agency or institution must notify both all eligible students and the parents of all students who are not eligible students.

Change: None.

Comment: A commenter, a representative of a postsecondary educational institution, believed that the refusal that students are allowed to exercise over the designation of directory information should be limited to the student's address and telephone number. The commenter indicated that the student's right of refusal has in some cases enabled students to commit fraudulent acts with a lessened chance of discovery.

Discussion: The statute provides students the right to refuse to allow the educational agency or institution to designate any or all of the items of information about the student as directory information.

Change: None.

Section 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

Comment: One commenter believed the Department of Education should give some direction to State schools or institutions that are mandated by State law to allow a student to have access to confidential letters of recommendation to which the student, under FERPA, has waived his or her right of access. The commenter indicated that if placement directors send a credential file that contains confidential letters of recommendation to schools or institutions in States that have those mandates, the schools or institutions will return the file on the basis that the confidentiality of the letters cannot be protected.

Discussion: The Secretary is unable to advise State schools or institutions with respect to the laws of each State. With respect to the Federal law, the statute provides that the access rights afforded by the law shall not operate to make letters and statements of recommendation available to students in institutions of postsecondary education who have executed a valid waiver of the right to inspect and review the letters or statements. In implementing the law, the regulations provide that a postsecondary institution "does not have to permit" a student to inspect and review the letters and statements of recommendation provided the student has executed a valid waiver. Under these provisions, an educational agency or institution is not precluded from providing a student access to a letter or statement of recommendation. Therefore, if a State law requires that a State institution afford a student access to letters or statements of recommendation, the Federal law would not interfere, irrespective of whether the student has executed a valid waiver of his or her right.

Change: None.

Section 99.64 What is the complaint procedure?

Comment: A commenter proposed that the intended meaning of the word timely as it appears in the second paragraph of this section should be defined.

Discussion: The Secretary has decided not to include a definition in the regulations for two reasons. First, the word appears only once in the regulations. Secondly, the meaning of the word would depend largely on the circumstances which are peculiar to each case. A complaint might involve complex circumstances and attempts by a complainant to resolve the issue independently that might reasonably have delayed the filing of the complaint. Such a complaint would be considered timely. Another complaint might involve an allegation of a violation that occurred many years ago and was never pursued despite the full knowledge of the student. In this case, the complaint would not be considered timely.

Change: None.

Section 99.67 How does the Secretary enforce decisions?

Comment: A commenter believed the law should be changed to provide that the Secretary may decide to withhold Federal funding under programs in addition to those administered by the Department of Education.

Discussion: The Secretary has no authority to withhold Federal funds under programs in other Federal agencies.

Change: None.

[FR Doc. 88-7764 Filed 4-8-88; 8:45 a.m.]

PART 600-INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Subpart A-General

Sec.

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600.32 Loss of eligibility

Appendix--Comments

Authority: 20 U.S.C. 1085, 1088, 1094 (c)(3), and 1141, unless otherwise noted.

Subpart A-General

Sec. 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an institution or school qualifies as an eligible institution under the Higher Education Act of 1965, as amended (HEA). An eligible institution may apply to participate in programs authorized by the HEA (HEA programs).

(Authority: 20 U.S.C. 1085 (a), (b), and (e), 1088 (b) and (c), 1094(c)(3) and 1141(a))

Sec. 600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition which a nationally recognized accrediting agency or association grants to an institution, school, or educational program which meets certain established qualifications and educational standards.

Clock hour: A period of time consisting of-

(a) A 50- to 60-minute class, lecture, or recitation;

(b) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship; or

(c) Sixty minutes of preparation in a program of study by correspondence.

Educational program: A legally authorized postsecondary program of organized instruction or study which leads to an academic or professional degree, vocational certificate, or other recognized educational credential. However, the Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: instruction provided by other institutions or schools, examinations provided by agencies or organizations, or other accomplishments such as "life experience."

Eligible institution: Includes-

(a) An institution of higher education, as defined in Sec. 600.4;

(b) A proprietary institution of higher education, as defined in Sec. 600.5;

(c) A postsecondary vocational institution, as defined in Sec. 600.6; and

(d) A vocational school, as defined in Sec. 600.7.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency or association: An agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution, school, or educational program in accordance with the provisions contained in 34 CFR Part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the Federal Register.

Nonprofit institution: An institution that-

(a) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(b) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(c) Is determined by the U.S. Internal Revenue Service to bean organization to which contributions are tax deductible inaccordance with section 501(c)(3) of the Internal Revenue Code.

One-year training program: An educational program that is at least-

(a) Twenty-four semester or trimester hours or units, or 36 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(b) Nine hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) Nine hundred clock hours in a program of study by correspondence.

Part B loan programs: The Guaranteed Student Loan (GSL), PLUS, Supplemental Loans for Students, and Consolidated Loan Programs. Each of these loan programs is authorized under Part B of Title IV of the HEA.

Preaccredited: A status that-

(a) A nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time; and

(b) The Secretary determines is the exclusive indication under sections 435(b)(5)(A) and 1201(a)(5)(A) of the HEA that an institution will meet the accreditation standards of a nationally recognized accrediting agency or association within a reasonable time.

Program of study by correspondence: An educational program offered principally by mail by an institution. Under this type of program, the institution prepares lesson materials and mails them to the student in a sequential and logical order. The student completes the lessons and mails them back to the institution within a specified period of time. The program may include a required period of residential training.

Recognized equivalent of a high school diploma:

(a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

Recognized occupation: An occupation that is-

(a) Listed in an "occupational division" of the latest edition of the Dictionary of Occupational Titles, published by the U.S. Department of Labor, or

(b) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree or certificate.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

Six-month training program: Either-

(a) An educational program that is at least-

(1) Sixteen semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) Six hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) Six hundred clock hours in a program of study by correspondence; or

(b) An educational program which the Secretary determines is at least a six-month training program on the basis of-

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a) (1) through (3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1071 et seq.; 1078-2, 1085, 1088, and 1141 and 26 U.S.C. 501(c))

Sec. 600.3 Special conditions.

For the purpose of Secs. 600.4, 600.5, 600.6, and 600.7:

(a) The Secretary considers an institution other than one offering only a program of correspondence to be "in a State" only if the institution's campus or place of instruction is physically located in that State.

(b) The Secretary considers an institution offering only a program of study by correspondence to be located only in the State in which its administrative office is located if the program does not include a period of residential training. If the program includes a period of residential training, the Secretary considers the institution to be located and the State in which its administrative office is located and the State in which its residential program is located.

(c)(1) If a State requires an institution to measure its educational programs in clock hours in order to be legally authorized in that State to provide a program of education beyond secondary education, the Secretary considers that institution is legally authorized in that State to provide a program of education beyond secondary education only if the institution measures its educational programs in clock hours.

(2) If a State requires a vocational school to measure its vocational or technical education programs in clock hours in order to be legally authorized in the State to provide a program of postsecondary vocational or technical education, the Secretary considers that vocational school to be legally authorized to provide a program of postsecondary vocational or technical education in that State only if the vocational school measures its vocational or technical programs in clock hours.

(d)(1) If as part of the application process for receiving a license, charter, or other document that demonstrates it is legally authorized to provide a program of education beyond secondary education in a State, the State requires an institution to measure its educational programs in clock hours, the Secretary considers that institution to be legally authorized to provide a program of education beyond secondary education in that State only if the institution measures its educational programs in clock hours.

(2) If as part of the application process for receiving a license, charter, or other document that demonstrates it is legally authorized to provide a postsecondary vocational or technical education program in a State, the State requires a vocational school to measure its educational programs in clock hours, the Secretary considers that institution to be legally authorized to provide a program of education beyond secondary education in that State only if the institution measures its educational programs in clock hours.

(Authority: 20 U.S.C. 1085 (b) and (c), 1088 (b) and (c), and 1141(a))

Sec. 600.4 Institution of higher education.

(a) An institution of higher education is a public or private non-profit educational institution which-

(1) Is in a State;

(2) Admits as regular students only persons who-

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, if the institution seeks to participate in a program other than a Part B loan program, have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is located;

(4) Provides an educational program-

(i) For which it awards an associate, baccalaureate, graduate, or professional degree, or other recognized educational credential;

(ii) Which is at least a two-year program acceptable for full credit toward a baccalaureate degree; or

(iii) Which is at least a one-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(5) Is-

(i) Accredited or preaccredited by a nationally recognized accrediting agency or association;

(ii) An institution whose credits the Secretary determines, in accordance with the provisions contained in Sec. 600.8, to be accepted on transfer by at least three accredited institutions for credit on the same basis as transfer credits from any accredited institution; or

(iii) Approved by a State agency that the Secretary recognizes, by listing in the Federal Register in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution-

(A) Is a public postsecondary vocational educational institution; and

(B) Seeks to participate only in Federal student assistance programs.

(b)(1) An institution, other than an institution that is eligible to participate only in a Part B loan program, that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these persons have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section.

(3) An institution shall retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(c) Notwithstanding the provisions in paragraph (a) of this section, the Secretary does not determine an institution to be eligible to apply to participate in the Part B loan programs if the institution uses or employs commissioned salespersons to promote the availability of Part B loan program loans at that institution.

(Authority: 20 U.S.C. 1085, 1094(c)(3), and 1141(a))

Sec. 600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution which-

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who-

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(5) Provides at least a six-month training program to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years. The Secretary considers a proprietary institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b)(1) A proprietary institution that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section.

(3) An institution must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Authority: 20 U.S.C. 1068(b))

Sec. 600.6 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private nonprofit educational institution which-

(1) Is in a State;

(2) Admits as regular students only persons who-

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located.

(4) Provides at least a six-month training program to prepare students for gainful employment in a recognized occupation;

(5) Is-

(i) Accredited or preaccredited by a nationally recognized accrediting agency or association;

(ii) An institution whose credits the Secretary determines, in accordance with the provisions contained in Sec. 600.8, to be accepted on transfer by at least three accredited institutions for credit on the same basis as transfer credits from any accredited institution; or

(iii) Approved by a State agency that the Secretary recognizes, by listing in the Federal Register in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State, if the institution is a public postsecondary vocational educational institution.

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b)(1) A postsecondary vocational institution that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section

(3) An institution must retain for at least five years documentation that demonstrates a student's ability to

complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Authority: 20 U.S.C. 1088 and 1094(c)(3))

Sec. 600.7 Vocational school.

(a) A vocational school is a business or trade school, technical institution, or other technical or vocational school which-

(1) Is in a State;

(2) Admits as regular students only persons who-

(i) Have completed or left elementary or secondary school; and

(ii) Have the ability to benefit, as determined by the institution in accordance with Sec. 600.11, from the training offered;

(3) Is legally authorized in the State in which the school is physically located to provide, and provides within that State a program of postsecondary vocational or technical education that-

(i) Is designed to provide occupational skills to fit individuals for useful employment in recognized occupations;

(ii) Is not less than-

(A) Eight semester or trimester hours or units, or 12 quarter hours or units, at a school using credit hours or units to measure the academic progress; or

(B) Three hundred clock hours of supervised training at a school using clock hours to measure progress;

(iii) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion of a minimum of 300 clock hours in not less than six months; and

(iv) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration:

(4) Is-

(i) Accredited by a nationally recognized accrediting agency or association; or

(ii) In the case of a public vocational school, approved by a State agency that the Secretary recognizes, by listing in the Federal Register, in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State;

(5) Has been-

(i) In existence for two years; or

(ii) Has been specifically determined by the Secretary to be an eligible location of a vocational school despite not having been in existence for two years; and

(6) Does not use or employ commissioned sales persons to promote the availability of Part B loan program loans at that school.

(b) For purposes of this section, the Secretary considers a school to have been in existence for two years only if it has been legally authorized to provide and has provided, a continuous training program to fit individuals for useful employment in recognized occupations during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(c)(1) A school that admits as regular students persons who do not have a high school diploma or its recognized equivalent shall consistently apply standards and procedures for determining, in accordance with Sec. 600.11, whether these persons have the ability to benefit from the training it offers.

(2) A school must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not complete, or who left, elementary or secondary school satisfied the school's standards under paragraph (c)(1) of this section.

(3) A school must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Authority: 20 U.S.C. 1085 and 1094(c)(3))

Sec. 600.8 Transfer-of-credit alternative to accreditation.

(a) For an unaccredited public or private nonprofit institution to satisfy the requirements of Sec. 600.4(a)(5)(ii) or Sec. 600.6(a)(5)(ii), the Secretary must determine that-

(1) At least three accredited institutions, which satisfy the conditions in paragraph (c) of this section, have a policy of accepting on transfer the credits of a student who transfers from the unaccredited institution on the same basis as they accept on transfer the credits of a student who transfers from any accredited institution;

(2) Within the three years preceding the date the unaccredited institution applies for a determination that it satisfies the requirements of Sec. 600.4(a)(5)(ii) or Sec. 600.6(a)(5)(ii)-

(i) At least twelve of the unaccredited institution's regular students or former regular students transferred to at least three of the accredited institutions identified under paragraph (a)(1) of this section, with a minimum of four transfer students to each accredited institution; and

(ii) Each of at least three of the accredited institutions to which the twelve students transferred accepted the credits of the students who transferred for credit on the same basis as it accepted the credits of students who transferred from any accredited institution.

(b) For the purposes of paragraph (a)(2) of this section, the Secretary considers that a student has transferred to an accredited institution if-

(1) The student has enrolled as a regular student in an accredited educational program in the accredited institution;

(2) The student no longer remains enrolled as a regular student at the unaccredited institution;

(3) The student has attended classes at the accredited institution for a period of time that exceeds the date beyond which the student would, upon withdrawal, qualify for the maximum refund of tuition and fees available to a student who attends at least one day of class; and

(4) The accredited institution has officially applied the credits earned by the student at the unaccredited institution toward a degree or certificate that it offers.

(c) To qualify under paragraph (a) of this section, an accredited institution must-

(1) Offer an educational program that is at least as long, in terms of academic years, academic terms, or clock hours, as the longest educational program offered at the unaccredited institution;

(2) Offer a degree or certificate at least as advanced as the highest degree or certificate offered at the unaccredited institution; and

(3) Apply the transfer credits toward an accredited degree or certificate program in which the transfer students will not constitute a majority of the students enrolled.

(d) If an unaccredited institution that was previously accredited or preaccredited has lost that status and applies for a determination that it satisfies the requirements of this section-

(1) The students described in paragraph (a)(2) of this section must have earned the transferred credits from the unaccredited institution after the institution lost its accreditation or preaccreditation; and

(2) Each accredited institution described in paragraph (a) of this section must know, when it accepts the credits of the transfer students, that the applicant institution lost its accreditation or preaccreditation before the credits to be transferred were earned.

(e)(1) The applicant unaccredited institution shall provide sufficient information and documentation to enable the Secretary to determine whether the unaccredited institution satisfies the requirements of this section. The information and documentation must include, but is not limited to-

(i) Information as to the length of the educational programs offered by the applicant unaccredited institution and the highest degree or certificate it offers;

(ii) The names and addresses of the institutions described in paragraph (a) of this section, and for each institution, the length of its educational programs and the degrees and certificates it offers;

(iii) The names of students described in paragraph (a)(2) of this section, and the dates those students attended their first classes at the applicant institution as well as the accredited institution;

(iv) Enrollment records from each of the institutions identified in accordance with paragraph (e)(1)(ii) of this section for the transfer students identified in accordance with paragraph (e)(1)(iii) of this section;

(v) An official publication of each institution identified in accordance with paragraph (e)(1)(ii) of this section that contains that institution's policy with regard to the acceptance of credits on transfer from accredited and unaccredited institutions;

(vi) Whether the applicant has ever been accredited or preaccredited and if so, the date on which it lost that accreditation or preaccreditation;

(vii) A certified statement from the dean of admissions or the registrar of the applicant unaccredited institution indicating that the institution has not paid, nor will it pay, to any accredited institution identified in accordance with paragraph (e)(1)(ii) of this section, any remuneration or compensation of any kind in exchange for accepting its credits, students or former students; and

(viii) A certified statement from the dean of admissions or registrar of each accredited institution identified in accordance with paragraph (e)(1)(ii) of this section indicating-

(A) That the policy of that institution is to accept the credits of students transferring from the applicant unaccredited institution for credit on the same basis that it accepts the credits of students transferring from any accredited institution;

(B) That the institution has not received and will not receive remuneration or compensation of any kind in exchange for accepting the unaccredited institution's credits or students;

(C) That the students identified in accordance with paragraph (e)(1)(iii) of this section transferred as regular students into accredited educational programs at the institution by enrolling and attending classes in those programs;

(D) The dates of enrollment of each of the students identified in accordance with paragraph (e)(1)(iii) of this section; and

(E) That the institution knows that the unaccredited institution is unaccredited and, if applicable, that the unaccredited institution has lost its accreditation or preaccreditation and the date of that loss.

(2) The Secretary does not begin to evaluate whether the unaccredited institution satisfies the requirement of this section until the applicant unaccredited institution provides all the information and documentation required for that determination.

(3) The Secretary may require, as a condition for making a determination that the applicant unaccredited institution has satisfied the requirements of paragraph (a) of this section, that any of the accredited institutions identified

in accordance with paragraph (e)(1)(ii) of this section confirm the accuracy of the information or documentation provided by the applicant which pertains to that accredited institution.

(f)(1) If the Secretary determines that an institution satisfies the requirements of this section, that determination remains in effect for three years.

(2) An institution may apply under this section for a renewal of its transfer-of-credit determination at the end of the three-year period. In that renewal application, the institution must identify an additional twelve students who have transferred, as described in paragraph (a)(2)(i) of this section.

(Authority: 20 U.S.C. 1085(b) and 1141(a))

Sec. 600.9 Written agreement between an eligible institution and another institution or organization.

(a) Subject to the conditions in paragraphs (b), (c), and (d) of this section, an eligible institution described in paragraph (b) of this section may, without losing its eligibility under this part, enter into a written agreement with another institution or organization under which that other institution or organization provides all or part of the educational program of students enrolled in the eligible institution.

(b) The provisions of this section apply only to an eligible institution that-

(1)(i) Is accredited or preaccredited by a nationally recognized accrediting agency or association; or

(ii) Is approved by a State agency that the Secretary recognizes, by listing in the Federal Register in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State; and

(2) Gives credit to students enrolled in the portion of the educational program that is provided by the other institution or organization on the same basis as if it provided that portion of the program itself.

(c) If an eligible institution enters into a written agreement with another eligible institution, there is no limit on the portion of a student's educational program that may be provided under the agreement.

(d) If an eligible institution enters into an agreement with an institution or organization that is not an eligible institution-

(1) The ineligible institution or organization may provide up to 25 percent of the educational program of a student enrolled in the eligible institution; or

(2) The ineligible institution or organization may provide more than 25 percent but not more than 50 percent of the educational program of a student enrolled in the eligible institution if-

(i) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership or corporation; and

(ii) The eligible institution's nationally recognized accrediting agency or association or recognized State agency specifically determines that the institution's agreement meets the agency's or association's standards for the contracting out of educational services.

(Authority: 20 U.S.C. 1094)

Sec. 600.10 Date, extent, duration, and consequence of eligibility.

(a) Date of eligibility. If the Secretary determines that an applicant satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution as an eligible institution as of the date the Secretary receives all the information necessary to make that eligibility determination.

(b)(1) Extent of eligibility. If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this subpart, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this subpart, the Secretary extends eligibility only to those educational programs and locations which meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent in accordance with Sec. 600.21.

(3) Eligibility does not extend to any location that the institution establishes after it receives the eligibility designation. If an eligible institution seeks to establish eligibility for a new location, the institution shall apply under Sec. 600.20.

(c) Subsequent additions of educational programs. (1) If an institution that has been designated by the Secretary as an eligible institution adds educational programs after that designation, the institution need not apply to the Secretary to have those additional programs designated as eligible programs but may determine on its own whether those programs satisfy the relevant statutory and regulatory eligibility requirements.

(2) If an institution incorrectly determines that its educational program satisfies the applicable statutory and regulatory eligibility provisions, the institution shall be liable to repay to ED all the student financial assistance and other ED program funds it or its students received who were enrolled in that educational program.

(d) Duration of eligibility. In addition to the requirements of Sec. 600.30, an institution shall renew its designation of eligibility, including all its educational programs and all its locations, every four years.

(e) Consequence of eligibility. (1) An eligible institution may apply to participate in the programs authorized by the HEA which are listed in the eligibility notice that it receives under Sec. 600.21.

(2) Merely by virtue of its designation as an eligible institution in the eligibility notice it receives under Sec. 600.21, an institution is not automatically eligible to-

(i) Participate in the programs authorized by the HEA which are listed in the eligibility notice that it receives under Sec. 600.21; or

(ii) Receive funds under any program authorized by the HEA.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Sec. 600.11 Ability to benefit.

(a) If an institution admits as a regular student a person who does not have a high school diploma or its equivalent, the institution shall determine, at the time of admission, whether that person has the ability to benefit from the education or training the institution offers.

(b) An institution shall determine whether a person described in paragraph (a) of this section has the requisite ability by-

(1) Administering to the person a nationally recognized, standardized, or industry developed test, subject to criteria of the institution's accrediting agency or association, that measures the applicant's aptitude to successfully complete the educational program for which the student has applied; or

(2) Determining that the person has the capability to successfully complete a GED preparation program by the end of the first year of the course of study or prior to the student's certification or graduation from the program of study, whichever is earlier; or

(3) Placing the person, after counseling or failure to meet the institution's admission's testing requirement, in an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

(Authority: 20 U.S.C. 1085, 1088, 1091, and 1141)

Subpart B-Procedures for Establishing Eligibility

Sec. 600.20 Application procedures.

(a) An institution that wishes to establish its eligibility to apply to participate in any program authorized by the HEA must first apply to the Secretary for a determination that it qualifies as an eligible institution.

(b) An institution applying for designation as an eligible institution must-

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of its eligibility.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Sec. 600.21 Eligibility notification.

(a) The Secretary notifies an institution in writing of the Secretary's determination-

(1) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate definition in Secs. 600.4 through 600.7; and

(2) Of the HEA programs for which it is eligible to apply for participation.

(b) If only a portion of the applicant qualifies as an eligible institution, the Secretary specifies in the notification of eligibility letter only the locations or programs which qualify. (Authority: 20 U.S.C. 1085, 1088, and 1141)

Subpart C-Maintaining Eligibility

Sec. 600.30 Institutional changes requiring review by the Secretary.

(a) An eligible institution shall notify the Secretary at the same time that it notifies its accrediting agency or association, but not later than ten days after the change occurs, of any change in the following information provided in the institution's eligibility application:

(1) Its name.

(2) Its address.

(3) The name, number, and address of locations other than the main campus at which it offers educational services.

(4) Its ownership, if that ownership change results in a change in control of the institution.

(5) The establishment of written agreements with other institutions or organizations in accordance with Sec. 600.9(b)(2).

(b) The Secretary notifies the institution in writing if the change affects the institution's eligibility.

(c) The institution's failure to inform the Secretary of the information described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against it, including the loss of its eligibilty.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Sec. 600.31 Change in ownership resulting in a change of control.

(a) An eligible institution, or a previously eligible institution that participated in any HEA program, that changes ownership resulting in a change of control is not considered by the Secretary to be the same institution unless-

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all HEA program funds which the institution received and improperly expended before the effective date of the change of control;

(2) The new owner agrees-

(i) To abide by the institution's policy regarding refunds of institutional charges to students in effect before the effective date of the change of control for students who were enrolled before the effective date; and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change;

(3) The institution submits individual statements for the new owners listing assets, liabilities, and net worth and either-

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year; or

(ii) An audit for the institution's latest complete fiscal year prepared by a licensed certified public accountant;

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in paragraph (a)(3) of this section is insufficient; and

(5) The institution provides for the retention of all records required in connection with its designation as an eligible institution and its participation in any HEA program. These records must include a copy of the latest prior application requesting a determinaton of institutional eligibility for HEA programs, the Secretary's eligibility notification received as a result of that application, and the institution's participation agreement for the student aid programs.

(b) The Secretary may require that the profit and loss statement and balance sheet provided for in paragraph (a)(3)(i) of this section be audited and certified by a licensed certified public accountant.

(c) For the purposes of this part, a change in ownership of an institution that results in a change of control means any action by which a person or corporation obtains new authority to control the actions of that institution. That action may include, but is not limited to-

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the controlling interest of stock or assets of the institution to its parent corporation; or

(6) The transfer of the liabilities of an institution to its parent corporation.

(d)(1) Except as provided in paragraph (d)(2) of this section, the Secretary considers an eligible institution, or a previously eligible institution that has participated in any HEA program, that changes ownership resulting in a change of control to be a new institution for the purpose of establishing eligibility if the new owner or owners of the institution have been convicted of or have pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or have been judicially determined to have committed fraud involving Federal funds.

(2) The Secretary may consider an eligible institution or a previously eligible institution to be the same institution for the purpose of establishing institutional eligibility under this part, if-

(i) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime;

(ii) At least five years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination; and

(iii) The funds that were fraudulently obtained or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid.

(e) If the Secretary considers an institution to be a new institution under this section, the institution under its new owner or owners must meet all applicable requirements for establishing eligibility, including, if applicable, the two years in existence requirement.

(Authority: 20 U.S.C. 1085, 1088(b), and 1094)

Sec. 600.32 Loss of eligibility.

(a) An institution loses its eligibility on the date that-.

(1) It fails to meet any of the eligibility requirements of this part;

(2) It permanently closes; or

(3) It ceases to provide educational programs (except during normal vacation periods).

(b) If the Secretary designates an institution as an eligible institution on the basis of inaccurate information or documentation, the Secretary's designation is void from the date it was made and the institution never qualified as an eligible institution.

(c) If an institution ceases to satisfy any of the requirements for eligibility under this part-

(1) It must notify the U.S. Department of Education within 30 days; and

(2) It becomes ineligible to continue to participate in any HEA program.

(Authority: 20 U.S.C. 1085, 1088 and 1141)

Appendix--Comments

Subpart A-General

Section 600.2 Definitions.

Six-month and one-year training programs.

Comment: Approximately 1500 commenters reacted to the proposed regulations which would have defined a "six-month training program" and a "one-year training program" to include a minimum number of calendar days. Most expressed strong objection to the proposed calendar day requirement stating that to require 150 calendar days of instruction for a six-month program and 210 days of instruction for a one-year program would result in the loss of eligibility for many public and private postsecondary institutions. Many expressed the opinion that 150 and 210 calendar days of instruction are not reflective of institutional practices of degree granting postsecondary institutions which operate on a nine- or ten-month academic year.

Hundreds of commenters expressed concern that the proposed definition would eliminate from eligibility all intensive or accelerated programs of instruction. Many felt the proposed requirement was in direct conflict with the philosophy of most proprietary schools, which is to teach the necessary skills to enable a student to obtain a job in the shortest possible amount of time. Others commented that to require a minimum number of calendar days of instruction for a six-month or a one-year program would force an artificial extension of the duration of the program by reducing the number of hours of instruction offered each day; that existing contractual agreements would preclude the immediate lengthening of programs, but in the long term, the proposed minimum number of calendar days would result in an increase in both the time and cost of instruction for both the students and the schools; and that the minimum number of calendar days requirement is discriminatory against clock-hour schools.

Others questioned the Secretary's authority to specify a minimum number of calendar days, expressing the view that these requirements conflict with provisions of section 432 of the General Education Provisions Act, 20 U.S.C. 1232a, which prohibits Federal intervention in the direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.

Several commenters noted that the proposed definitions were in conflict with the definitions of a six-month training program and a one-year training program in 34 CFR Part 668, the Student Assistance General Provisions regulations.

Response: A change has been made. To consider the wide range of concerns that were expressed by the commenters regarding the proposed definitions of a "one-year training program" and a "six-month training program," the Secretary convened a series of meetings with representatives of the nationally recognized accrediting agencies and associations. One of the items discussed at those meetings was the need to find ways to curtail abuse of the student financial assistance programs through measurement of academic progress management. Toward this end, the Secretary and the nationally recognized accrediting agencies and associations agreed that the accrediting agencies and associations would recommend to the Secretary policies and procedures for the accrediting agencies and associations to adopt to standardize the review and approval of clock hour and credit hour conversions. As discussed in the preamble of these regulations, pending the recommendations from the nationally recognized accrediting agencies and associations, the Secretary has modified the proposed definitions of a "one-year training program" and a "six-month training program" by deleting the minimum calendar day requirement from each definition.

Comment: Hundreds of commenters objected to the provision included in the proposed definitions of a six-month training program and a one-year training program that would require an institution that uses credit hours or units to measure the academic progress of a one-year training program or a six-month training program to be legally authorized by the appropriate State agency to measure those program in credit hours. The commenters noted that the standards of the States vary and that some States neither authorize nor prohibit the use of credit hours; that this requirement would create an undue burden on the States and the institutions; and the ED is encroaching on the role of accreditation. The commenters questioned the Secretary's authority to require an institution to be authorized by the State to measure in credit hours.

Some questioned the need for the Secretary to "ratify" the determination of a nationally recognized accrediting agency's certification of a six-month program, as required by paragraph (c) of the definition of a six-month training program in Sec. 668.2.

Response: A change has been made. The Secretary deleted the requirement that an institution must be specifically legally authorized in the State in which it is located to carry out educational programs in credit hours.

As discussed in the preamble of these regulations, the Secretary has added two new sections under Sec. 600.3, "Special conditions," to clarify ED's policy with regard to the relationship between the institution being legally authorized to provide postsecondary education program in a State and the method that the institution uses to measure academic progress for participation im HEA programs.

Since the six months requirement is a statutory requirement, the Secretary believes it is necessary to ratify an accrediting agency's determination.

Academic year.

Comment: One commenter noted that the terms "academic year" and "first year of the course of study" are not defined in the proposed regulations and expressed the view that part-time adult students would be adversely affected if a year is defined in terms of calendar days rather than equivalent credits taken.

Response: No change has been made. For the purposes of this part, the term "first year of the course of study," as used in sec. 484(d) of the HEA, refers to the first academic year of a course of study of a regular student whom the institution has admitted on the basis of a determination of the student's ability to benefit from the training offered.

Educational program.

Comment: Several commenters expressed concern that the proposed definition of an educational program limits eligibility to schools providing instruction, while eliminating the eligibility of schools that utilize assessment of external course work and life experience. The commenters stated that non-traditional, innovative institutions provide a much-needed educational function of assessing students' knowledge and skills relative to specific educational programs. They felt that the criterion for determining the institution's eligibility should be linked to whether it is accredited, and that the Secretary's definition of an educational program exceeds congressional intent to the point of being contradictory with the HEA.

Response: A change has been made. The Secretary has modified the proposed regulations by adding the phrase "including a course of independent study" to clarify that the term "instruction," as used in the definition of an "educational program," includes programs of independent study. However, the Secretary believes that it is necessary for an institution or school to provide instruction in order to satisfy the educational program requirement of the statutory definition of an institution of higher education, a proprietary institution of higher education, a postsecondary vocational institution, or a vocational school.

Recognized equivalent of a high school diploma.

Comment: One commenter noted that the definition in the proposed regulations of the "recognized equivalent of a high school diploma" does not address those students who have excelled academically and are admitted to a postsecondary educational institution prior to receiving a high school diploma.

Response: No change has been made. In those limited situations where a postsecondary institution admits a student who has not received a high school diploma, but the student has excelled academically in high school and has met formalized, written admission policies of the institution, the Secretary considers the student as having the equivalent of a high school diploma.

Regular student.

Comment: Several commenters questioned the appropriateness of the definition in the proposed regulations of a "regular student," expressing the view that a program of study that is in compliance with State and Federal regulations should be the criterion for determining whether a student is eligible for Federal financial assistance. Others expressed the view that an institution should have the right to define a regular student and should be allowed to admit students on a provisional or conditional basis.

A few commenters were of the opinion that the definition of a "regular student" is inordinately broad and could have a negative impact on an institution's statistical base in determining its administrative capability. For instance, an accepted student who was never charged any tuition or fees and who never attended one day of classes would be classified as a "regular student" for the purpose of calculating the institution's ratio of withdrawals under the Student Assistance General Provisions regulations.

Response: No change has been made. The definition of a regular student was initially included in ED regulations in 1979 and has remained basically unchanged since that time. Moreover, it is necessary to define "regular student" in these regulations since an element of each of the statutory definitions of a postsecondary educational institution includes the type of regular student the institution admits. The Student Assistance General Provisions regulations have been revised to remove any distortion that may be caused by the definition of a regular student.

Section 600.3 Special conditions.

Comment: Two commenters requested clarification regarding the location of an institution if the institution offers a program of study by correspondence and has sales offices in numerous locations or has more than one administrative office.

Response: A change has been made. The Secretary has modified the proposed regulations by deleting the reference to the "sales office" under this section. Thus, a correspondence school is considered to be located in the State in which it has its administrative office.

Comment: Two commenters inquired whether a school offering a program of study by correspondence with a residential training component is considered to be located only in the State in which its administrative or sales office is located.

Response: A change has been made. The Secretary has modified the proposed regulations to clarify that if a program of study by correspondence includes a period of residential training, the Secretary considers the institution to be located in both the State in which its administrative office is located and the State in which its residential program is located.

Comment: One commenter inquired if the proposed regulations which require a minimum duration of 90 calendar days in a vocational education program applies to home study programs and also to programs that combine home study with residential training.

Response: A change has been made. The Secretary has modified the definition of vocational school by deleting the requirement that would require a minimum duration of 90 calendar days in a vocational education program.

Section 600.5 Proprietary institution of higher education.

Comment: Two commenters inquired if the following two criteria of the definition in the proposed regulations of a proprietary institution of higher education are inconsistent: Sec. 600.5(a)(4), which requires an institution to be legally authorized to provide an educational program beyond secondary education, and Sec. 600.5(a)(5), which requires the institution to provide at least a six-month training program.

Response: No change has been made. These are two separate, independent requirements contained in the statutory definition of a proprietary institution of higher education and are not inconsistent. Each of these requirements must be met in order to qualify as an eligible proprietary institution of higher education.

Comment: One commenter noted that in recent years many high schools have developed vocational programs of instruction at a level that were previously offered only by postsecondary institutions and suggested that the definition in the propose regulations of a vocational school is not consistent with this practice.

Response: A change has been made. The Secretary agrees and has revised the proposed definition of vocational school by deleting the phrase "more advanced than those generally offered at the high school level."

Comment: Several commenters expressed concern that the proposed regulations would eliminate one or both of the alternatives to accreditation (i.e., State agency approval and advisory committee approval) for public vocational schools that are located in those States in which the Secretary has not recognized a State agency for approval of public postsecondary vocational education. One commenter took exception to the statement in the proposed regulations that no vocational school has sought eligibility under these alternatives to accreditation in the last ten years.

A few commenters noted that the Higher Education Amendments of 1986 did not repeal the alternatives to accreditation for unaccredited vocational schools, and commented that they did not object to the Secretary's plan not to promulgate regulations, provided the regulations are not needed in order for a school to use the alternatives to accreditation for eligibility under this part.

Others expressed the view that accreditation by an agency recognized by the Secretary for that purpose is the appropriate mechanism for assuring the quality of education; therefore, to eliminate the alternative methods of accreditation for eligibility for GSL, SLS and PLUS programs is appropriate.

Response: No change has been made. The Secretary will continue to recognize State agencies, for the purpose of approving public vocational schools as an alternative to accreditation by listing in the Federal Register in accordance with 34 CFR Part 603.

The Secretary will not issue regulations governing the advisory committee alternative to accreditation, as nearly all categories of vocational schools now have access to a nationally recognized accrediting agency or approval by a State agency.

The statement in the proposed regulations that no vocational school has sought eligibility in the past ten years under these alternatives to accreditation applied only to the advisory committee alternative. In the event a school seeks accreditation in a category for which no appropriate nationally recognized accrediting or State agency is available, the Secretary appoints an advisory committee to prescribe standards and approve schools for a particular category. No regulations are needed for this procedure.

Section 600.8 Transfer-of-credit alternative to accreditation.

Comment: Several commenters objected to requirements in the proposed regulations to increase from three to four the number of students of an unaccredited institution whose credits must be accepted on transfer by each of three accredited institutions. They also objected to requirements that the students must be accepted into programs not specifically designed for them that the students' credits be evaluated and accepted on the same basis as transfer students from accredited institutions, that the students actually enroll and attend the accredited institution, and that the accredited institution have an educational program at least as long as the longest educational program offered at the unaccredited institution.

Two commenters also objected to requirements that an unaccredited institution must: (1) Submit an official publication from each accredited institution stating the policy of the institution regarding acceptance of transfer credits from accredited and unaccredited institutions; (2) obtain and submit enrollment records for each student transferred; and (3) certify that no payments were made to the accredited institution in conjunction with the institution's acceptance of credits of students on transfer from the unaccredited applicant institution.

Response: No change has been made. The Secretary believes that increasing from three to four the number of students or former students of an unaccredited institution that must transfer to each of three accredited institutions will provide further evidence that the accredited institution has based its decision to accept the credits of the unaccredited applicant institution on the quality of the educational program of the unaccredited institution rather than upon the qualifications of a particular student.

In accepting the credits of students on transfer from an unaccredited institution, the accredited institution must apply the same admission policies as it applies in accepting the credits of students on transfer from any accredited institution. Therefore, if it is an accredited institution's standard admission policy to charge a fee to evaluate the credits of students who apply for admissions on transfer from another accredited institution, as stated in the institution's catalogue or other official publication, the Secretary will recognize that policy with regard to the payment of fees for evaluating the credits of students who apply for admission on transfer from an unaccredited institution.

The Secretary is legally authorized to require that an unaccredited institution that is requesting eligibility to participate in HEA programs under the transfer-of-credit alternative demonstrate that it satisfies the transfer-of-credit alternative. Based upon experience, the Secretary has determined that it is the better administrative practice in this area to require the applicant institution to provide all the information and documents necessary for the Secretary to make a determination and that actual documents rather than mere certifications be provided to support that determination.

Section 600.9 Written agreement between an eligible institution and another institution or organization.

Comment: Two commenters objected to the proposed regulations to require an institution itself to be accredited or preaccredited in order to enter into a written agreement with another organization. The commenters stated that the proposed regulations would prohibit some "eligible institutions" that are neither accredited nor preaccredited from entering into a written agreement with another institution or organization to provide a portion of the eligible institution's total educational program. The opinion was expressed that all institutions that are designated as eligible should be entitled to the same benefits.

Response: No change has beeen made. The Secretary believes it to be inappropriate for an unaccredited institution to retain its eligibility as an eligible institution if it contracts to have a portion of its eligible program provided by another institution.

Section 600.10 Date, extent, duration, and consequences of eligibility.

Date of eligibility.

Comment: Several commenters expressed reservations concerning the proposed rules to establish the effective date of eligibility as of the date on which the Secretary receives all the information necessary to make that eligibility determination. Many expressed concern as to whether ED resources would be available to maintain the procedure.

Most expressed the view that the effective date of eligibility should be the date on which the institution meets the requirements for eligibility as confirmed by the Secretary. Others suggested the following: The date of application unless the Secretary changes the date for good and substantial cause; the date the accrediting agency indicates in its letter of notification to ED that a school has been accredited, a program of study was added or a change of location or ownership occurred; or the postmark date on certified mail so that both the institution and the Secretary would have a clear audit trail. Some stated that the current practice should be maintained.

Others felt the date of eligibility should be modified to state that this eligibility covers all in-school students to the extent of the academic year within that award year.

Response: No change has been made. The Secretary believes the date of eligibility cannot be established before the date on which the institution meets all requirements of the relevant statutory definition. The first date on which the Secretary can be assured that an institution or school has met all of those requirements is the date on which all materials are available to the Secretary to support that determination. The Secretary also believes that an institution should not be penalized by ED delays in processing the application.

Extent of eligibility.

Comment: Many commenters objected to the proposed regulations which would have prohibited extending an institution's eligibility to any educational program or location that an institution establishes after it receives the eligibility designation. It was stated that the effect of this provision would be to shift authority from the nationally recognized accrediting agencies directly to the Secretary, and that it would delay the eligibility of students attending new courses at extension or location facilities. Some commented that the provision is contrary to the concept of institutional accreditation, and noted that over time ED's procedures for designating eligibility have ranged from issuing blanket letters of eligibility to the current procedure of issuing eligibility letters that are program-of-study specific and require updating as program offerings change. The current procedure was described as burdensome, time-consuming, and confusing for the institutions.

Others expressed the view that if a new program is both accredited and legally authorized by the State in which the institution is located, a determination of program eligibility on a program-by-program basis should not be required.

Several questioned the need for the multiple safeguard efforts, noting that the proposed regulations would require the State, the accrediting agency, and ED to approve curriculum, program, and location changes.

Others expressed a wide range of concerns, including that the proposed provision would, in effect, eliminate institutional accreditation, that the schools will cease to have the capability to respond to the dynamics of the current job market and the needs of the community, that consideration should be given to finding ways to reduce the length of the process as students must already wait a minimum of three months for a school to be eligible to participate in the student financial assistance programs, that implementation of this provision will result in a very significant increase in the number of applications pending before ED without any clearly ascertainable benefit to the Federal interest, that the provision represents an extension of present authority and suggests that ED is moving toward the approval of all educational matters, and that the provision would impose an enormous administrative burden on the staff of ED, as well as result in a significant increase in paper production and complicate the approval process which is not in keeping with the Paperwork Reduction Act of 1980.

Response: A change has been made. The basis for many of theconcerns that were expressed by the commenters is not clear. The proposed regulations would have required ED to review each educational program that an eligible institution adds after the institution receives its designation of eligibility. This was consistent with ED's former practice of reviewing individual educational programs for eligibility for participation in HEA student aid programs. However, the Secretary has tried to accommodate some of the concerns by modifying the proposed regulations to eliminate ED's review of individual educational programs that are added by an institution or school after it receives its designation of eligibility.

The Secretary has also modified the regulations by setting forth in Sec. 600.10(c) the responsibility of an institution that has been designated as an eligible institution if it adds educational programs after that designation. The Secretary has further amended Sec. 600.10 by adding a new paragraph (d) to limit an institution's or school's designation of eligibility to a period of four years by requiring that each eligible institution or school renew its eligibility designation, including all its educational programs and all its locations, during its fourth year of eligibility under its most recent eligibility designation.

Comment: One commenter expressed the view that an eligible institution might be required to notify ED when it adds a new or additional location or programs, but questioned the authority of ED to exclude those locations and programs from eligibility whether established before or after institutional eligibility is recognized.

Response: No change has been made. The Secretary extends eligibility to only those locations and educational programs of an institution that are identified in the institution's application and are determined to meet all requirements of this part. An institution's eligibility does not extend to any location that the institution establishes after it receives its eligibility designation. If an institution changes or adds a location, the eligibility status of that location is subject to the requirements of Sec. 600.30 of this part.

Section 600.20 Application procedures.

Comment: One commenter stated that the proposed regulations describing the procedures for applying for institutional eligibility are vague regarding the information and documentation that must be provided to the Secretary. It was suggested that the regulations be more specific concerning the application requirements such as: Include a list of the required documents, or simply require the institution to provide all information necessary to demonstrate that it meets the definition of an eligible institution, as defined in Sec. 600.2, Sec. 600.4, Sec. 600.5, Sec. 600.6, and Sec. 600.7.

Response: No change has been made. The eligibility application to be provided an applicant institution will contain all the specific information needed by the Secretary to determine whether the applicant qualifies as an eligible institution or school.

Section 600.30 Institutional changes requiring review by the Secretary.

Comment: Numerous commenters objected to the proposed regulations which would have required at least 45 days advance notice before the effective date of any change in the information described in Sec. 600.30. These commenters objected to the advance notice requirement on the basis that changes are not always pre-planned, that certain programs (such as externships) may utilize a large and changing number of locations which would significantly increase the institution's paperwork burden, and that an institution is not assured of a change of ownership until the day of the sale, which may or may not be 45 days in advance of the effective date.

Many commenters expressed their concern that the 45 days advance notice requirement would result in unnecessary paperwork since in many cases it may involve a two-step procedure because the anticipated change may never occur. Questions were raised as to what purpose pre-occurrence reporting would serve.

Response: A change has been made. The Secretary has modified the regulations to require that an institution notify ED of the institutional changes described in Sec. 600.30 concurrently with its notifying its appropriate accrediting agency, but no later than ten days after the change occurs.

To notify ED of an institution change that requires review by the Secretary, an institution may simply send to ED a copy of the completed "notice of change" form that the institution uses to notify its accrediting agency of an institutional change.

Section 600.31 Change in ownership resulting in a change of control.

Comment: A few commenters noted that, under Sec. 668.18 of the Student Assistance General Provisions regulations, an institution which is undergoing a change of ownership is required to submit certain financial information, and inquired whether ED will continue to require, for the purpose of establishing or retaining eligibility, a profit and loss statement for the institution's latest complete fiscal year, prepared by a licensed certified public accountant, and any additional financial information which may be required by the Secretary.

Response: A change has been made. The Secretary has modified the regulations to require new owners of an institution to provide a profit and loss statement and a balance sheet, or an audit prepared by a licensed certified public accountant, for the institution's latest complete fiscal year, and any additional information requested by the Secretary.

Comment: One commenter noted that the proposed regulations provide for the retention of all records that are required in connection with an institution's participation in any HEA program, but the regulations do not indicate what records are to be retained nor for what period of time.

Response: A change has been made. The Secretary has modified the regulations to require an institution to maintain, in accordance with section 437 of the General Education Provisions Act, 20 U.S.C. 1232f, all documents that pertain to its application, its notification of institutional eligibility, and its participation agreement for a period of not less than five years.

Comment: A number of commenters requested clarification of the circumstances under which the Secretary considers an institution to be a "new institution" and, as such, subject to the two-years-in-existence requirement. Some inquired if the "new institution" requirement contained in Sec. 600.31(d) applies solely to Sec. 600.31(c) in which a new owner has been convicted of a crime involving an HEA program, or if Sec. 600.31(d) applies to new owners who fail to abide by the requirements of Sec. 600.31(a), or to other situations.

Clarification was also requested as to whether the "new institution" status, under Sec. 600.31(d), applies to both previous owners and new owners who have been convicted of a crime involving any HEA programs. For instance, if a group of investors, one of whom has a relevant conviction, acquires control of an institution, would the institution be considered a "new institution" as a result of the new ownership and, therefore, subject to the two-years-in-existence requirement for the purpose of establishing eligibility? It was suggested that the "new institution" status under Sec. 600.31(d) should not apply to present owners who have been convicted of a crime involving HEA programs.

Response: A change has been made. The Secretary has modified the regulations to provide criteria for determining whether a new owner of an eligible or previously eligible institution or school is subject to the two-years-in-existence requirement as a result of having been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds.

The Secretary may consider an eligible or a previously eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school to be the same institution for the purpose of establishing institutional eligibility under this part, only if the new owner or owners who were convicted of, of pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds are no longer incarcerated for that crime; at least five years have elapsed from the date of the conviction, nolo contendere pleas, guilty plea, or judicial determination; and the funds that were frauduently obtained or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid.

Section 600.32. Loss of eligibility.

Comment: Several commenters objected to the proposed regulations to permit the Secretary to void an eligibility designation if an institution's eligibility determination was based on inaccurate information, stating that the term "inaccurate information," as used in the proposed regulations, is too vague and general. It was suggested that the regulations be modified to indicate material inaccuracy and that only institutional intention to supply false information should be grounds for loss of eligibility.

Response: No change has been made. An institution that does not satisfy the definition of an eligible institution or school is not an eligible institution or school even though the Secretary may have determined the institution or school as eligible on the basis of inaccurate information. If an institution or school intentionally provided false information, the institution may be subject to legal action.

Comment: Two commenters objected to the proposed regulations to permit a determination regarding the loss of an institution's eligibility without due process of law. Under due process, an institution would be afforded an evidentiary administrative hearing before any action was taken to void its eligibility.

The commenters also objected to the proposed regulations because no provision is included to govern loss-of-eligibility determinations involving unexpected emergency situations, such as fire or natural disaster.

Response: No change has been made. An institution loses its eligibility if and when it no longer satisfies one of the qualifying statutory definitions. An evidentiary administrative hearing is not authorized by the HEA and that type of hearing would not be necessary since the facts with regard to compliance with the statutory definition would not be in doubt.

[FR Doc. 88-7424 Filed 4-4-88; 8:45 am]

PART 668-STUDENT ASSISTANCE GENERAL PROVISIONS

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Appendix B-Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

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Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

Subpart A-General

Sec. 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes-

(1) A public or private nonprofit institution of higher education as defined in Sec. 668.3;

(2) A proprietary institution of higher education as defined in Sec. 668.4;

(3) A postsecondary vocational institution as defined in Sec. 668.5; and

(4) A vocational school as defined in Sec. 668.6.

(c) The Title IV, HEA programs include-

(1) The Pell Grant Program (20 U.S.C. 1070a et seq.; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070b et seq.; 34 CFR Part 676);

(3) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c et seq.; 34 CFR Part 692);

(4) The Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program (20 U.S.C. 1070d-31 et seq.; 34 CFR Part 654);

(5) The Guaranteed Student Loan (GSL) Program (20 U.S.C. 1071 et seq.; 34 CFR Part 682);

(6) The Supplemental Loans for Students (SLS) Program (20 U.S.C. 1078-1; 34 CFR Part 682);

(7) The PLUS Program (20 U.S.C. 1078-2; 34 CFR Part 682);

(8) The Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR Part 682);

(9) The College Work-Study (CWS) Program (42 U.S.C. 2751 et seq.; 34 CFR Part 675);

(10) The Income Contingent Loan (ICL) Program (20 U.S.C. 1087aa et seq.; 34 CFR Part 673); and

(11) The Perkins Loan Program (20 U.S.C. 1087a et seq.; 34 CFR Part 674).

(Authority: 20 U.S.C. 1070 et seq.)

Sec. 668.2 General definitions.

The following definitions apply to all Title IV, HEA programs:

Academic year: (a) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system;

(b) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(c) At least 900 clock hours at an institution which measures academic progress in clock hours.

(Authority: 20 U.S.C. 1088)

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-based programs: (a) The Perkins Loan Program (34 CFR Part 674);

(b) The College Work-Study (CWS) Program (34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant (SEOG) Program (34 CFR Part 676).

Clock hour: The equivalent of—

(a) A 50 to 60 minute class, lecture or recitation;

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty minutes of preparation in a program of study by correspondence.

College Work Study Program (CWS): The part-time employment program for students authorized by Title IC-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

Consolidation Loan Program: The loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1078-3)

Defense loan: A loan made before July 1, 1972, Under Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 421-429)

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under Title IV-E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa et seq.)

Enrolled: The status of a student who—

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Guaranteed Student Loan (GSL) Program: The student loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1071 et seq.)

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 et seq.)

Income Contingent Loan (ICL) Program: The student loan program authorized by Title IV-D of the HEA.

(Authority: 20 U.S.C. 1087a et seq.)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other Title IV, HEA programs.

(Authority: 20 U.S.C. 1070a-6; 20 U.S.C. 1087vv)

National Defense Student Loan Program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title IV-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

One year training program: A program which is at least—

(a) Twenty-four semester or trimester hours or units, or 36 quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) Nine hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) Nine hundred clock hours in a correspondence program.

(Authority: 20 U.S.C. 1141(a))

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Pell Grant Program: The grant program authorized by Title IV-A-1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Perkins loan: A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa et seq.)

Perkins Loan Program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

PLUS Program: The loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1078-2)

Recognized equivalent of a high school diploma: (a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

(Authority: 20 U.S.C. 1141(a))

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program: The scholarship program authorized by Title IV-A-6 of the HEA.

(Authority: 20 U.S.C. 1070-31 et seq.)

Secretary: The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Six month training program: (a) A program which is at least—

(1) Sixteen semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) Six hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) Six hundred clock hours in a correspondence program.

(b) A program which the Secretary determines is at least a six month training program on the basis of—

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)(1) through (3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination. (Authority: 20 U.S.C. 1088)

State: Each State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, and, except for the Byrd Scholarship Program, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1141b; 20 U.S.C. 1088(a); 20 U.S.C. 1070d-32)

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV-A-3 of the HEA.

(Authority: 20 U.S.C. 1070c et seq.)

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by Title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b et seq.)

Supplemental Loans for Students (SLS) Program: The loan program authorized by Title IV-B of the HEA and formerly called the ALAS Program.

(Authority: 20 U.S.C. 1078-1)

U.S. citizen or national: (a) A citizen of the United States; or (b) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

(Authority: 20 U.S.C. 1070 et seq. unless otherwise noted)

Sec. 668.3 through 668.6 [Reserved]

Sec. 668.7 Eligible student.

(a) Eligibility. A student is eligible to receive assistance under the Pell Grant, SEOG, SSIG, GSL, PLUS, SLS, CWS, ICL, and Perkins Loan programs if the student-

(1) Is-

(i) A regular student enrolled or accepted for enrollment in an eligible program; or

(ii) For purposes of the GSL, PLUS, or SLS programs, enrolled as at least a half-time student in a course of study necessary for enrollment in an eligible program for no longer than one twelve-month period;

(2) Is not enrolled in either an elementary or secondary school;

(3)(i) Has a high school diploma or its recognized equivalent;

(ii) If enrolled at a public or private nonprofit institution of higher education-

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Except for the GSL, PLUS, or SLS programs, has the ability to benefit from the education or training offered by that institution, according to the requirements of paragraph (b) of this section;

(iii) If enrolled at a proprietary institution of higher education or postsecondary vocational institution-

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Has the ability to benefit from the training offered by that institution, according to the requirements of paragraph (b) of this section; or

(iv) If enrolled at a vocational school, has the ability to benefit from the training offered, according to the requirements of paragraph (b) of this section;

(4)(i) Is a U.S. citizen or national;

(ii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she-

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands; or

(iv) For purposes of the Pell Grant, SEOG, and CWS programs-

(A) Is a citizen of the Federated States of Micronesia who was enrolled in an institution on November 2, 1986;

(B) Is a citizen of the Marshall Islands who was enrolled in an institution on October 20, 1986; or

(C) Is a citizen of the Republic of Palau who was enrolled in an institution on the day preceding the effective date of the Compact of Free Association;

(5) If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of paragraph (c) of this section;

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs. A student owes a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he or she is eligible to receive or use;

(7) Except as provided in paragraph (e) of this section, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs;

(8) Has filed a Statement of Educational Purpose and Selective Service Registration Status in accordance with the requirements of Subpart C;

(9) As determined by the institution that he or she attends, has not borrowed-

(i) In excess of the annual loan limits under the ICL, GSL, PLUS, or SLS programs in the same academic year for which he or she has applied for assistance under any Title IV, HEA program; and

(ii) In excess of the aggregate maximum loan limits under the ICL, Perkins Loan, GSL, PLUS, SLS, or Consolidation Loan programs;

(10) Has financial need, if applicable, in accordance with the requirements of the Title IV, HEA program under which he or she has applied for assistance; and

(11) Meets the requirements of-

(i) For purposes of the ICL Program, 34 CFR 673.22;

(ii) For purposes of the Perkins Loan Program, 34 CFR 674.9;

(iii) For purposes of the CWS Program, 34 CFR 675.9;

(iv) For purposes of the SEOG Program, 34 CFR 676.9;

(v) For purposes of the GSL, PLUS, or SLS programs, 34 CFR 682.201;

(vi) For purposes of the Pell Grant Program, 34 CFR 690.75; or

(vii) For purposes of the SSIG Program, 34 CFR 692.40.

(b) Ability to benefit. A student who is admitted to an institution as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible for any assistance under a Title IV, HEA program only if the student-

(1) Before admission-

(i) Is administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he or she has applied; and

(ii) Demonstrates that aptitude on that test;

(2) Receives a GED before the earlier of-

(i) The student's certification or graduation from his or her program of study; or

(ii) The completion of the student's first academic year of that program of study; or

(3) Enrolls in and successfully completes a remedial or developmental educational program of not more than one academic year that is prescribed by the institution, if the student-

(i) Is counseled before admission; or

(ii) Does not demonstrate the aptitude necessary to complete successfully the educational program to which he or she has applied on the test described in paragraph (b)(1) of this section.

(c) Satisfactory progress. In order for a student who has not received assistance under any Title IV, HEA program during an award year beginning before July 1, 1987, or for the GSL, PLUS, and SLS programs a period of enrollment beginning before July 1, 1987, to be eligible to receive assistance under any of those programs, an institution shall-

(1) Review the student's academic progress at the end of each academic year;

(2) Determine that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that-

(i) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(ii) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by-

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; and

(3) Determine, in the case of a student who was not making satisfactory academic progress in accordance with paragraph (c)(2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

(d) Refund of a grant or scholarship overpayment. Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) Pell Grant overpayment.

(i) If an institution makes a Pell Grant overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if-

(A) The Student is otherwise eligible; and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) If an institution makes a Pell Grant overpayment to a student as a result of its own error and cannot eliminate the overpayment under paragraph (d)(1)(i)(B) of this section, the student is eligible to receive assistance under a Title IV, HEA program if the student-

(A) Is otherwise eligible; and

(B) Acknowledges the overpayment and agrees, in writing, to repay it within six months.

(2) SEOG or SSIG overpayment. If an institution makes an SEOG or SSIG overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if-

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(e) Default on a loan. Notwithstanding paragraph (a)(7) of this section, a student who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) GSL, PLUS, SLS, or Consolidation Loan programs. A student who is in default on a loan made under the GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program if-

(i) The student is otherwise eligible; and

(ii) The Secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs. A student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs is eligible to receive assistance under a Title IV, HEA program if-

(i) The student is otherwise eligible; and

(ii) The institution that made the loan or the Secretary,

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if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(f) Bankruptcy. The Secretary does not consider a loan made under the ICL, National Defense/Direct Student Loan, Perkins Loan, Guaranteed Student Loan, PLUS, SLS, or Consolidation Loan programs that is discharged in bankruptcy to be in default for purposes of this section. (Authority: 20 U.S.C. 1070a-1070c-1, 1077, 1078, 078-1-3, 1082, 1085, 1087a, 1087cc, and 1091; 42 U.S.C. 2753)

Sec. 668.8 Eligible program.

(a) General. An eligible program is a program of education or training that-

(1) Admits as regular students only persons who-

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma;

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, except for the GSL, PLUS, or SLS programs, have the ability to benefit from the education or training offered; or

(iv) For a program at a vocational school, have completed or left elementary or secondary school and have the ability to benefit from the education or training offered;

(2)(i) Leads to a bachelor's, associate, graduate, or professional degree;

(ii) Is at least a two-year program that is acceptable for full credit toward a bachelor's degree;

(iii) Is at least a one-year training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(iv) Is, for a proprietary institution of higher education or a postsecondary vocational institution, at least a six-month training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(v) Is, for a vocational school, a program of postsecondary vocational or technical education leading to a degree, certificate, or other recognized educational credential that-

(A) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(B) In the case of an institution using clock hours to measure academic progress, is no less than 300 clock hours of supervised training;

(C) In the case of an institution using credit hours or units to measure academic progress, is no less than eight semester or trimester hours or units or 12 quarter hours or units;

(D) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(E) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration; or

(vi) Is, for purposes of the GSL, PLUS, or SLS programs, at least a one-year training program for graduates of accredited health-professions programs that-

(A) Is provided by a hospital or health-care facility; and

(B) Leads to a degree or certificate; or

(3) For purposes of the Pell Grant, ICL, and SEOG programs, is an undergraduate program; and

(4) For the purposes of the Pell Grant Program, may consist of instruction in English as a second language (ESL) in accordance with paragraph (b)(2) of this section.

(b) Pell Grant Program-(1) Study by correspondence. For purposes of the Pell Grant Program, an eligible program of study by correspondence is an undergraduate program of education or training that meets the criteria for an eligible program in paragraph (a) of this section and that is designed to require at least 12 hours of preparation per week.

(2) English as a second language (ESL). (i) The Secretary considers a program that consists solely of instruction in ESL to be an eligible program if the program meets the requirements of paragraph (a) of this section and admits only students who the institution determines to need to ESL instruction to use already existing knowledge, training, or skills.

(ii) An institution shall document its determination that the instruction in ESL described in paragraph (b)(2)(i) of this section is necessary to enable each student whom it admitted to use already existing knowledge, training, or skills.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c-1070c-2, 1085, 1087aa-1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

(Approved by OMB under control #1840-0537)

Subpart B-Standards for Participation in Title IV, HEA Programs

Sec. 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program may subject the institution to proceedings under Subpart G. These proceedings may lead to a fine, or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the Title IV, HEA programs.

(Authority: 20 U.S.C. 1094)

Sec. 668.12 Institutional participation agreement.

(a) An institution may participate in any Title IV, HEA program, other than the SSIG Program, only if-

(1) The Secretary determines that the institution meets the standards established in this subpart; and

(2) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

(b)(1) A participation agreement conditions the initial and continued eligibility of the institution to participate in any Title IV, HEA program upon compliance with the provisions of this part and the individual program regulations.

(2) In the participation agreement, the institution agrees-

(i) That it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA programs, including the requirement that it will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(ii) That it has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at that institution; and

(iii) That it will not request from or charge any student a fee for processing or handling-

(A) Any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance; or

(B) The Federal Student Assistance Report required under section 483(f) of the HEA.

(c)(1) Except as provided under paragraph (c)(3) of this section, a participation agreement becomes effective on the date executed by the Secretary.

(2) A participation agreement supersedes any prior participation agreement between the Secretary and the institution.

(3) The new participation agreement of an institution that changed its ownership resulting in a change in control is effective on the date that the institution changed its ownership if-

(i) The institution's prior participation agreement was not terminated through procedures contained in Subpart G; and

(ii) Under the Pell Grant and campus-based programs, the date that the institution changed ownership that resulted in a change in control and the date on which the Secretary executed the new agreement took place in the same award year.

(d)(1) Except as provided in paragraph (e) of this section, the Secretary terminates a participation agreement through the procedures set forth in Subpart G.

(2) An institution may terminate a participation agreement.

(3) If the Secretary or the institution terminates a participation agreement under this paragraph, the Secretary establishes the termination date.

(e) An institution's participation agreement automatically terminates on the date the institution changes ownership that results in a change in control.

(Authority: 20 U.S.C. 1094)

Sec. 668.13 Factors of financial responsibility.

(a) To begin and to continue participation in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this section.

(b) In general, the Secretary considers an institution to be financially responsible if it is able to-

(1) Provide the services described in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all of its financial obligations, including, but not limited to-

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(c) Notwithstanding paragraph (b) of this section, the Secretary considers an institution not to be financially responsible if-

(1) Under its basis of accounting, it-

(i) Has had operating losses over at least its two most recent fiscal years; or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(2) Under an accrual basis of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1;

(3) Under a fund accounting system, its unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years; or

(4)(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA program, or the receipt of Title IV, HEA program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been-

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(d)(1) The Secretary may determine an institution to be financially responsible, even if the institution is considered not to be financially responsible under paragraphs (b), or (c)(1) through (c)(3) of this section, if the institution submits to the Secretary a letter of credit payable to the Secretary in an amount established by the Secretary, a performance bond in an amount established by the Secretary, or any other document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or to continue to participate in any Title IV, HEA program.

(2) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(4) of this section if-

(i) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(ii) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(iii) At least five years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination.

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, to the extent requested by the Secretary, submit for its latest complete fiscal year and its current fiscal year-

(1) A profit and loss statement and a balance sheet that are based on the same basis of accounting used by the institution for financial reporting; or

(2) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards.

(f)(1) The Secretary may require that the documents referred to in paragraph (e)(1) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(2) If the Secretary requires an institution to submit a profit and loss statement, a balance sheet, or an audit report under paragraph (e) of this section, the Secretary may also require the institution to submit the accountant's or auditor's work papers.

(g)(1) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the Title IV, HEA program funds the institution received as a trustee. A fidelity bond indemnifies the holder against losses resulting from fraud or lack of integrity, honesty, or fidelity of its employees or officers.

(2) A public institution that is bonded by the State against the type of losses described in paragraph (g)(1) of this section does not have to obtain additional fidelity bond coverage.

(3) Any bond required under this paragraph must be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(Authority: 20 U.S.C. 1094 and Section 4 of Pub. L. 95-452)

(Approved by OMB under control #1840-0537)

Sec. 668.14 Standards of administrative capability.

To begin and to continue participation in any Title IV, HEA program, an institution shall demonstrate to the Secretary that it is capable of adequately administering that program under the standards established in this section. Except as provided in Sec. 668.15, the Secretary considers an institution to have that administrative capability if it establishes and maintains student and financial records required under Sec. 668.23 and the individual Title IV, HEA program regulations and if it-

(a) Designates a capable individual to be responsible for-

(1) Administering all the Title IV, HEA programs in which it participates; and

(2) Coordinating the Title IV, HEA programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance;

(c) Uses an adequate number of qualified persons to administer the Title IV, HEA program. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, HEA program, is maintaining satisfactory progress in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards-

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under a Title IV, HEA program; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which the student must complete his or her educational objective, degree, or certificate. The time frame must be-

(A) Determined by the institution;

(B) Based on the student's enrollment status; and

(C) Divided into increments, not to exceed one academic year.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of Sec. 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews-

(1) All student aid applications, need analysis documents, Statements of Educational Purposes, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for Title IV, HEA program funds;

(g)(1) After conducting the review of an application provided for under paragraph (f) of this section, refers for investigation any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are:

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income:

(2) Makes the referrals described in paragraph (g)(1) of this section to the Office of Inspector General of the Department of Education, or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the matter; and

(3) Reports to the Office of Inspector General for each calendar year all referrals made to State or local law enforcement agencies under this paragraph for that calendar year;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding-

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed or applied to a student's account; and

(3) The rights and responsibilities of the student with

respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package; and

(i) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.

(Authority: 20 U.S.C. 1094)

(Approved by OMB under control #1840-0537)

Sec. 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The fiscal year default rate, as defined in paragraph (f) of this section, on loans made under the GSL and SLS programs to students for attendance at that institution exceeds 20 percent;

(2) The default rate on loans made under the Perkins Loan program to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(3)(i) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(ii) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b) If the GSL and SLS fiscal year default rate for an institution exceeds 20 percent for any fiscal year, the Secretary may, after such consultation with cognizant guarantee agencies as the Secretary deems appropriate, take one or more of the following actions:

(1) On or after January 1, 1991, initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the eligibility of the institution to participate in the Title IV, HEA programs, if-

(i) The institution's GSL and SLS fiscal year default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (e.g., a 50 percent rate was not reduced to 45 percent or below); or

(ii) The institution's GSL and SLS fiscal year default rate exceeds-

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) Require the institution to submit to the Secretary and one or more guarantee agencies the following information, within a time frame specified by the Secretary, to help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution:

(i) A comprehensive written analysis of the causes of default by its students, for defaults in the first two years of repayment, that occurred during the three most recent calendar years ending not less than six months prior to the Secretary's request, and the factual basis for each conclusion reached in the analysis.

(ii) In the case of an institution offering an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, a statistical analysis showing the following for each program:

(A) The pass rates of students of the program in the three preceding calendar years ending not less than six months prior to the Secretary's request on any licensure or certification examination required by the State in which the institution is located for employment in the particular vocational, trade, or career field.

(B) The job placement rates for students who were originally scheduled, at the time of enrollment, to complete the program in the three most recent calendar years ending not less than eighteen months prior to the Secretary's request, as calculated in accordance with Sec. 668.44(1)(iii) of this part.

(C) The completion rates for students in the program for the three most recent calendar years ending not less than 18 months prior to the Secretary's request, as calculated in accordance with Sec. 668.44(c)(1)(iv) of this part, for all of the institution's regular students in the aggregate, and as segregated according to the following categories:

(1) Title IV student aid recipients.

(2) High school graduates or holders of GED certificates at the time of enrollment.

(3) Students admitted on the basis of "ability to benefit" as defined in Sec. 668.7(b) of this part.

(iii) A written description of all additional steps taken by the institution beyond those otherwise required by statute, regulation, or agreement with the Secretary, designed to reduce defaults by its students in the future.

(iv) Any other information relating to that determination, as reasonably required by the Secretary.

(c)(1) If the default rate for an institution under the Perkins Loan program exceeds the rate set forth in paragraph (a)(2) of this section, or if the withdrawal rate at an institution exceeds the rate set forth in paragraph (a)(3) of this section for an academic year, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same accounting procedures used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high withdrawal or default rate and the best measures for alleviating that condition.

(2) The date of preparation of the documents referred to in paragraph (c)(1)(i) through (iii) of this section must be within 12 months of the date of the Secretary's request.

(d) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (c)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(e) If the institution's GSL and SLS fiscal year default rate, Perkins Loan program default rate, or withdrawal rate exceeds the rates set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section respectively, in addition to, or in lieu of, taking the actions described in paragraph (b) of this section, or requiring the institution to submit the documents described in paragraph (c) of this section, the Secretary may require the institution, after notice and opportunity for a hearing, to take specified reasonable and appropriate measures to alleviate that condition as a requirement for its continued participation in the Title IV, HEA programs.

(f) The following definitions apply to this section and Sec. 668.90 of this part:

(1) "Fiscal year default rate" means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than 30 of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average of the rate calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(2) "Fiscal year" means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(Authority: 20 U.S.C. 1082, 1094)

(Approved by OMB under control #1840-0537)

Sec. 668.16 Federal interest in Title IV, HEA program funds.

Funds received under the Pell Grant SEOG, CWS, ICL, and Perkins Loan programs, except those funds received for the administrative cost allowance, are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e. use as collateral) Title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1070 et seq.)

Sec. 668.17 [Reserved]

Sec. 668.18 [Reserved]

Sec. 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any Title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution or the student shall request each institution the student previously attended to provide a financial aid transcript to the institution the student is or will be attending.

(3) Except as provided in paragraph (a)(5) of this section, until an institution receives a financial aid transcript from each eligible institution the student previously attended, the institution-

(i) May withhold payment of Pell Grant, campus-based, and ICL funds to the student;

(ii) May disburse Pell Grant, campus-based, or ICL funds to the student for one payment period only;

(iii) May decline to certify the student's GSL or SLS application;

(iv) Shall not release GSL or SLS proceeds to a student; and

(v) Shall not certify an application for a PLUS Program loan sought on behalf of the student.

(4)(i) An institution may not hold GSL or SLS proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a GSL or SLS application before receiving all required financial aid transcripts shall return to the lender any GSL or SLS proceeds for the student if it receives a financial aid transcript indicating that-

(A) The amount of the loan proceeds would cause the student to exceed a loan limit under the GSL or SLS programs;

(B) The student is in default on any loan made under the GSL, PLUS, SLS, Consolidation Loan, ICL, National

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Defense/Direct Student Loan, or Perkins Loan programs; or

(C) The student owes a repayment on a grant received under the Pell Grant, SEOG, or SSIG programs.

(5) The institution may disburse Title IV, HEA program funds to the student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended-

(i) Has closed, and information concerning the student's receipt of Title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution for which a financial aid transcript is requested-

(1) All information in its possession concerning whether a student attended institutions other than itself and the institution for which the transcript is requested; and

(2)(i) A financial aid transcript for that student, if the student received or benefited from any Title IV, HEA program assistance while attending the institution providing the transcript; or

(ii) A written certification that-

(A) The student did not receive or benefit from any Title IV, HEA program assistance while attending the institution from which the transcript was requested; or

(B) The transcript pertains solely to years for which the institution no longer has and is no longer required to keep records under the applicable Title IV, HEA program recordkeeping requirements.

(c) A financial aid transcript must be signed by an official authorized by the institution providing the transcript to disclose information in connection with Title IV, HEA programs and must include, for any award year for which that institution has or is required to keep records—

(1) The student's name and social security number;

(2) Whether the student was treated as an independent student under any year preceding the award for which a financial aid transcript is requested;

(3) Whether the student is in default on any loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs for attendance at the institution;

(4) To the extent that the institution is aware, whether the student is in default on any loan made under the GSL, PLUS, or SLS programs for attendance at the institution or any loan made under the Consolidation Loan Program;

(5) Whether the student owes a refund on any grant made under the Pell Grant or SEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution;

(6) For the award year for which a financial aid transcript is requested, the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(7) The total amount of loans made under the ICL Program to the student for attendance at the institution;

(8) The total amount of loans made under the National Defense/Direct Student Loan and Perkins Loan programs to the student for attendance at the institution;

(9) Whether the student owed an outstanding balance on July 1, 1987 on either a Defense loan or Direct loan made for attendance at the institution;

(10) The amount of and period covered by each loan made to the student under the GSL, PLUS, or SLS programs for attendance at the institution; and

(11) The amount of and period covered by each loan made under the PLUS Program on behalf of the student for attendance at the institution.

Authority: 20 U.S.C. 1094

(Approved by the Office of Management and Budget under control number 1840-0537)

[FR Doc. 88-19678 Filed 8-29-88; 8:45 am]

Sec. 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

(d) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by-

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the nonremedial course with the most comparable classroom and homework requirements.

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs, an institution may not take into account any noncredit or reduced credit remedial course if-

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program; or

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining-

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to-

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-year academic limitation contained in paragraph (d) of this section.

[Authority: 20 U.S.C. 1094]

Sec. 668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or noninstitutional costs under the Pell Grant, SEOG, ICL, and Perkins Loan programs are an overpayment.

(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

[Authority: 20 U.S.C. 1094]

Sec. 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.

(a) Repayment of institutional refunds to Title IV, HEA programs. (1) An institution shall return a portion of a refund owed to a student to the Title IV, HEA programs if-

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance under any Title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period by financial aid and/or cash payments minus the amount retained by the institution for the portion of the payment period that the student was actually enrolled at the institution. The amount retained by the institution for the student's actual period of enrollment is calculated according to the institution's refund policy.

(3) The portion of the refund that the institution shall return to the Title IV, HEA program(s) is the lesser of-

(i) The amount of assistance received under the Title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

$$\frac{\text{Total amount of Title IV, HEA program assistance (exclusive of CWS Program earnings) awarded for the payment period.}}{\text{Total amount of assistance (exclusive of all work earnings) awarded for the payment period.}}$$

(b) Repayments to Title IV, HEA programs of disbursements made to the student for noninstitutional costs. (1) If a student officially withdraws, drops out, or is expelled on or after his or her first day of class of a payment period, the institution shall determine what portion, if any, of the Title IV, HEA program assistance (other than from the CWS, GSL, PLUS, or SLS program received for that payment period by the student for noninstitutional costs is an overpayment that must be repaid by the student. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR Parts 673, 674, 675, 676, and 690).

(2)(i) To determine if any of the Title IV, HEA program assistance received by the student for noninstitutional costs constitutes an overpayment, the institution shall subtract the noninstitutional costs incurred by the student for that portion of the payment period during which the student was enrolled from the amount of assistance disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(3) The portion of the overpayment as determined according to paragraph (b)(2) of this section that the institution shall return to the Title IV, HEA program(s) is the lesser of-

(i) The amount of assistance received under the Title

IV, HEA programs other than the CWS, GSL, PLUS, or SLS programs for the payment period; or

(ii) The amount obtained by multiplying the overpayment by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of College Work Study and GSL, PLUS, and SLS loans) awarded for the payment period.

Total amount of assistance (exclusive of all work earnings and GSL, PLUS, and SLS loans awarded for the payment period.

(c) Payment period. For purposes of this section-

(1) A payment period under the GSL, PLUS, and SLS programs is a semester, trimester or quarter. At an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of the academic year; and

(2) The amount of a loan made under GSL, PLUS, or SLS program is considered to be awarded in proportionate amounts corresponding to the number of payment periods calculated according to paragraph (c)(1) of this section.

(d) Drop out date. For purposes of this section, a student is considered to have dropped out on the last recorded date of class attendance by the student as documented by the institution.

(e) Distribution among the Title IV, HEA programs. An institution shall develop a written policy allocating the Title IV, HEA program portion of the refund determined under paragraph (a) of this section of the Title IV, HEA program portion of the overpayment determined under paragraph (b) of this section among the Title IV, HEA program(s) from which the student received aid. This allocation policy must be applied consistently to all students who have received Title IV, HEA program assistance and must conform to the following:

(1) No amount of the Title IV, HEA program portion of the refund or of the overpayment may be allocated to the CWS Program.

(2) No amount of Title IV, HEA program portion of the overpayment may be allocated to the GSL, PLUS or SLS program.

(3) The amount of the Title IV, HEA program portion of the refund or of the overpayment allocated to a specific Title IV, HEA program may not exceed the amount that the student received from that program.

(4) The amount of the Title IV, HEA program portion of the refund allocated to the GSL, PLUS, and SLS programs must be returned to the borrower's lender by the institution in accordance with program regulations (34 CFR Part 682).

(5) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS and SLS programs must be returned to the appropriate program account(s) by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(6) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS, and SLS programs must be returned to the appropriate program account(s) within 30 days of the date that the student makes the repayment.

(Authority: 20 U.S.C. 1094)

(Approved by OMB under control #1840-0537)

Sec. 668.23 Audits, records, and examination.

(a) An institution which participates in the ICL (34 CFR Part 673), Perkins Loan (34 CFR Part 674), CWS (34 CFR Part 675), SEOG (34 CFR Part 676), GSL (34 CFR Part 682), PLUS (34 CFR Part 682), SLS, or Pell Grant (34 CFR Part 690) programs shall comply with the regulations for those programs concerning-

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) For purposes of audit and examination, an institution which participates in any Title IV, HEA program shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records required by the program regulations and this part and to any other pertinent books, documents, papers, and records.

(c)(1) An institution which participates in the ICL, Perkins Loan, CWS, SEOG, GSL, PLUS, SLS, or Pell Grant programs shall have performed a financial and compliance audit of its Title IV, HEA programs. The audit shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

(2) Procedures for audits are contained in audit guides developed by, and available from, the Education Department's Office of the Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's Standards.

(3) The institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the preceding audit.

(4)(i) If the institution receives campus-based funds, the institution shall submit the audit report to the Inspector General by March 31 of the year following the last award year covered by the audit.

(ii) If the institution does not receive campus-based funds, the institution shall submit the audit report to the Inspector General by January 31 of the year following the last year covered by the audit.

(5) The institution shall-

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(d) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with the Single Audit Act (Chapter 75 of Title 31, United States Code).

(e) Upon written request, an institution shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any Title IV, HEA program funds.

(f)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution shall establish and maintain, on a current basis, records regarding-

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her course of study;

(iv) Any refunds due or paid to the student, the Title IV, HEA program account(s) and the student's lender under the GSL, PLUS, and SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see Sec. 668.19);

(vii) The verification of student aid application data; and

(viii) Information substantiating all disclosures made to a prospective student under Sec. 668.44 (c) through (f) of this part.

(2)(i) An institution shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA assistance, which are relevant to the institution's admission standards.

(ii) An institution at which only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s), whether or not the student received Title IV, HEA assistance.

(3) Records shall be-

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion.

Authority: 20 U.S.C. 1088, 1094, 1141 and section 4 of Pub. L. 95-452)

(Approved by OMB under control #1840-0537)

Sec. 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of the institution, the Education Department's Inspector General questions an expenditure or the institution's compliance with an applicable requirement (including the lack of proper documentation), the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the Inspector General's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner of repayment.

(2) The institution shall repay those funds within 45 days of the date of the Secretary's notification, unless-

(i) The institution files an appeal under the procedures established in Subpart H; or

(ii) The Secretary permits a longer repayment period.

(3) If the institution is found to have expended funds improperly under the proceedings established in Subpart H, the institution shall repay those funds within 30 days of a final determination under Subpart H unless the Secretary permits a longer repayment period.

(Authority: 20 U.S.C. 1094)

Sec. 668.25 Loss of institutionalized eligibility.

(a) When an institution loses its eligibility or ceases to provide educational instruction, it shall-

(1) Immediately notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of under instructions from the Secretary, any unobligated Title IV, HEA program funds and any GSL, PLUS, or SLS proceeds it has received, except-

(i) Those funds for which it has made a commitment but not yet paid to students in that payment period; and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility-

(i) All financial, performance, and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(5) Inform the Secretary of how it will provide for the collection of any outstanding Title IV, HEA loans; and

(6) Distribute refunds of unearned tuition and fees according to Sec. 668.21.

(b) For the purposes of this section-

(1) A commitment under the Pell Grant Program occurs after a student is enrolled and attending the institution and has submitted a valid student aid report to the institution;

(2) A commitment under the campus-based and ICL programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution; and

(3) A commitment under the GSL, PLUS, and SLS programs occurs when the Secretary or a guarantee agency advises the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094)

Subpart C-Statement of Educational Purpose and Selective Service Registration Status

Sec. 668.31 Scope.

This subpart establishes rules by which an otherwise eligible student files a Statement of Educational Purpose and a Statement of Registration Status in order to receive assistance under any title IV, HEA program.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

Sec. 668.32 Statement of Educational Purpose.

(a) Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution, or under the GSL, PLUS, or SLS programs, with the lender. In this statement the student shall-

(1) Include his or her social security number or if he or she does not have a social security number, his or her student identification number; and

(2) Certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment, or, for the purposes of the GSL, PLUS, or SLS programs, at the institution named on the student's loan application.

(b) Except as provided in paragraph (c) of this section, the student shall file the Statement of Educational Purpose once for each award year, or, under the Campus-Based programs, either once for each award year or once for each 12-month period for which a determination of need is made.

(c) A student is only required to file the Statement of Educational Purpose once for his or her course of study if—

(1) The course of study is one academic year or less in length; and

(2) The student is to complete the course of study within a 12-month period.

(d) Until a student who is applying for Title IV, HEA program assistance under the Pell Grant, campus-based, SSIG or ICL programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any Title IV, HEA program.

(Authority: 20 U.S.C. 1091)

[50 FR 26953, June 28, 1985, as amended at 51 FR 43161, Nov. 28, 1986 and 52 FR 45734, Dec. 1, 1987]

(Approved by OMB under control #1840-0537)

Sec. 668.33 Statement of Registration Status.

(a)(1) Except as provided in paragraph (b) or (c) of this section, until a student who is applying for Title IV HEA program assistance, or under the PLUS Program, who will benefit from the loan, files a Statement of Registration Status with the institution, an institution may not, for any period of instruction—

(i) Disburse funds to the student under any Title IV, HEA program; or

(ii) Certify the institutional portion of the application under the Guaranteed Student Loan or PLUS Program.

(2) In the Statement of Registration Status the student shall certify either that he is registered with Selective Service or that, for a specified reason, he or she is not required to be registered.

(b) An institution may waive the requirement that a student file a Statement of Registration Status if the institution determines, based on clear and unambiguous evidence, that the student is not required to be registered with Selective Service.

(c) The requirement set forth in paragraph (a) of this section does not apply to students who are—

(1) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(i) The Citadel, Charleston, South Carolina;

(ii) North Georgia College, Dahlonega, Georgia;

(iii) Norwich University, Northfield, Vermont; or

(iv) Virginia Military Institute, Lexington, Virginia;

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who are on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(3) Unable to present themselves for registration for reasons beyond their control, such as being hospitalized, incarcerated, or institutionalized.

(d) Except as provided in paragraph (e) of this section, a student required under paragraph (a) of this section to file a Statement of Registration Status shall do so once for each award year. If the student's status under registration law changes during the award year after he has completed the Statement of Registration Status, the student is not required to file a new statement for that award year.

(e) An institution may waive the requirement that a student file a Statement of Registration Status once for each award year, if—

(1) The institution already has on file a Statement of Registration Status for that student; and

(2) The student's status under registration law has not changed since the institution received the most recently filed Statement of Registration Status.

(f) An institution which waives the requirement that a student file the Statement of Registration Status is liable for any title IV aid provided to a student who was required to register, but who was not registered, if—

(1) The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

(2)(i) The institution had conflicting information about whether the student was required to register, and

(ii) Its determination that the student was not required to register was not reasonable in the light of all available information.

(g) An institution which accepts a Statement of Registration Status from a student is liable for any title IV aid provided to a student who was required to register, but who was not registered, if the institution—

(1) Has information that conflicts with the student's Statement; and

(2) Its acceptance of the student's representation on the Statement regarding his status was not reasonable in light of all the available information.

(Authority: 50 U.S.C. App. 462)

[50 FR 26953, June 28, 1985, as amended at 51 FR 43161, Nov. 28, 1986]

(Approved by OMB under control #1840-0537)

Sec. 668.34 Model Statement of Educational Purpose and Registration Status.

The Secretary considers the following statement to satisfy the requirements of Sec. Sec. 668.32 and 668.33(a) and the notification requirement of Sec. 668.35(a):

Statement of Educational Purpose

I certify that I will use any money I receive under a Title IV, HEA loan, grant, work study, or scholarship program only for expenses related to my study at (Name of Institution)

Statement of Registration Status

— I certify that I am not required to be registered with Selective Service because:

— I am female.

— I am in the armed services on active duty. (Note: Does not apply to members for the Reserves and National Guard who are not on active duty.)

— I have not reached my 18th birthday.

— I was born before 1960.

— I am a permanent resident of the Trust Territory of the Pacific Islands.

— I am a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

— I certify that I am registered with Selective Service.

Signature: —

Date: —

Social Security Number (or Student Identification Number only if you have no Social Security Number): —

Notice: To receive Title IV financial aid, you must complete the Statement of Educational Purpose, and you must be registered with Selective Service if required to register. If you purposely give false information on this form, you may be subject to fine or imprisonment or both.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

(Approved by OMB under control #1840-0537)

Sec. 668.35 Notification and administrative review.

(a)(1) General notice. An institution shall provide general written notice to any student seeking aid under any title IV, HEA program that in order to receive this aid, a student must register with Selective Service, if required to do so under registration law.

(2) Specific notice. Before denying aid to any student under any title IV, HEA program who is required by law to register with the Selective Service, but fails to do so, or who fails to file the Statement of Registration Status in accordance with Sec. 668.33, the institution shall inform that student in writing that he or she will be denied title IV, HEA program assistance.

(b)(1) A student notified under paragraph (a)(2) of this section who has not registered although required to do so may establish his eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by registering with Selective Service and filing a Statement of Registration Status before the end of that award year.

(2) A student notified under paragraph (a)(2) of this section who fails to file a Statement of Registration Status but has registered with the Selective Service or is not required to register with the Selective Service may establish his or her eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by filing a Statement of Registration Status within 30 days of the receipt of the notice or the end of the same award year, whichever is later.

(c) Administrative review. (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has complied with that requirement may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(d) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(e) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Authority: 50 U.S.C. App. 462)

(Approved by OMB under control #1840-0537)

Sec. 668.36 Record retention requirements.

An institution shall include in each student's record in accordance with the record retention provisions in each of the title IV, HEA program regulations—

(a) The signed Statement of Educational Purpose;

(b) The signed Statement of Registration Status, if required; and

(c) Any documents used to verify the student's registration status.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

Subpart D-Student Consumer Information Services

Source: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

Sec. 668.41 Scope and special definition.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning—

(1) The institution (see Sec. 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see Sec. 668.43).

(b) The following definition applies to this subpart: Prospective student: An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution.

(Authority: 20 U.S.C. 1092)

Sec. 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall—

(a) If necessary, prepare and publish materials covering the topics set forth in Sec. 668.43 and Sec. 668.44; and

(b) Make those materials available through appropriate publications and mailings to—

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

(Authority: 20 U.S.C. 1092)

Sec. 668.43 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective student's under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(Authority: 20 U.S.C. 1092)

(Approved by the Office of Management and Budget under control number 1840-0537)

Sec. 668.44 Institutional Information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by Sec. 668.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students; and

(7) The titles of persons designated under Sec. 668.45 and information regarding how and where those persons may be contacted.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(c)(1)Prior to a prospective student's enrollment or execution of an enrollment contract, whichever occurs earlier, in an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, the institution shall disclose to the prospective student—

(i) All licensure or certification requirements established by the State in which the institution is located for the

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particular vocational, trade, or career field;

(ii) The pass rate of students in the program for the most recent calendar year that ended not less than six months prior to the date of disclosure, on any licensure or certification examination required by the State for employment in the particular vocational, trade, or career field;

(iii) The job placement rate for students who were originally scheduled, at the time of enrollment, to complete the program in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment for any student for whom the institution does not possess evidence, documented in the student's file, showing that the student has obtained employment in the occupation for which the program is offered.

(iv) The completion rate for students in the program for the most recent calendar year that ended not less than 18 months prior to the date of disclosure. This rate is calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year that successfully completed the program, or obtained full-time employment in the occupation for which the training was offered, within 150% of the amount of time normally required to complete the program; and

(v) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(2) For purposes of this paragraph (c), a student is "originally scheduled, at the time of enrollment, to complete the program" on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" must be calculated on a pro rata basis for students enrolled on a less than full-time basis.

(d) With respect to a program other than an undergraduate non-baccalaureate program designed to prepare students for a particular vocational, trade, or career field, prior to a prospective student's enrollment or execution of an enrollment contract, whichever is earlier, in a program for which the institution publicly makes a claim as to the job placement experience of its students as a means of attracting students to enroll in the program, the institution shall disclose to the prospective student—

(1)(i) The information described in paragraphs (c)(1)(i) through (iii) of this section, in the case of a baccalaureate or graduate program designed to prepare students for a particular vocational, trade, or career field; or

(ii) Other valid employment statistics for students who have enrolled in the program, for any other program;

(2) The information described in paragraph (c)(1)(iv) of this section; and

(3) Any other information necessary to substantiate the truth of the claim as to job placement.

(e) If an institution makes a claim to a prospective student regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field, it must disclose to the prospective student detailed statistics and other information necessary to substantiate the truthfulness of that claim.

(f)(1) The institution shall make the disclosure required under paragraphs (c)(1)(ii) through (iv) of this section using the applicable disclosure form set forth in Appendix A to this part, except that an institution may use an appropriate foreign language version of that form for a student whose primary language is not English.

(2) The institution shall indicate in the space provided for that purpose on the form the number of graduates of the program included in the calculation of the job placement rate disclosed on the form who state in writing that they have chosen not to attempt to obtain employment in the occupation for which the program is offered, and the number of students scheduled to graduate in that year, if any, who fail to indicate within 60 days, in response to a questionnaire seeking that information sent by the institution to the last known address of the student, whether they have obtained employment in that occupation.

(3) The completed disclosure form must be signed by the student and a copy thereof maintained by the institution in the student's file.

(Authority: 20 U.S.C. 1082, 1092)

(Approved by the Office of Management and Budget under control number 1840-0537)

Sec. 668.45 Availability of employees for information dissemination purposes.

(a) Availability. (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in Sec. 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) Waiver. (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary considers whether there will be an

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insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(Authority: 20 U.S.C. 1092)

Subpart E-Verification of Student Aid Application Information

Source: 51 FR 8948, Mar. 14, 1986, unless otherwise noted.

Sec. 668.51 General.

(a) Scope and purpose. (1) The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, the campus-based, and the Guaranteed Student Loan (GSL) programs.

(2) The regulations also cover the verification by institutions of information submitted under the GSL Program by applicants whose adjusted gross family income is $30,000 or less.

(b) Applicant responsibility. If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) Institutional Quality Control Pilot Project. (1) For the 1986-87 through 1990-1991 award years, the Secretary exempts institutions selected to participate in the institutional Quality Control Pilot Project from the requirements contained in the following sections:

(i) Section 668.53(a)(1) through (4).

(ii) Section 668.54(a)(1), (2), and (4).

(iii) Section 668.56.

(iv) Section 668.57, except that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a)

(2) For the purpose of this section, the Institutional Quality Control Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must evaluate its current procedures for administering the Title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures (error measurement process component) and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

(d) Foreign schools. The Secretary exempts from the provisions of this subpart institutions participating in the GSL Program that are not located in a State.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 43333, Dec. 1, 1986]

Sec. 668.52 Definitions

The following definitions apply to this subpart:.

"Approved need analysis system" means a need analysis system which the Secretary has approved for an award year for determining an EFC under the campus-based programs.

"Base year" means the calendar year preceding the first calendar year of an award year.

"Edits" means a set of preestablished factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

"Expected family contribution (EFC)" means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's costs of attendance.

"GSL Needs Test Tables" means the tables in Appendix B to 34 CFR Part 682 used to calculate a GSL applicant's EFC.

"Student aid application" which a person submits to have his or her EFC determined under the Pell Grant, campus-based, or GSL programs.

(Authority: 20 U.S.C. 1094)

Sec. 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in an application to have an EFC calculated in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification;

(4) The procedures the institution requires an applicant to follow to correct application information; and

(5) The procedures for making referrals under Sec. 668.14(g).

(b) The institution's procedures must provide that it furnish, in a timely manner, to each applicant selected for verification—

(1) A clear explanation of the documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

Sec. 668.54 Selection of applicants for verification.

(a) General requirements. Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph. (1) If the edits specified by the Secretary select an applicant for verification, the institution shall require the applicant to verify all of the applicable items specified in Sec. 668.56. The Secretary may enter into agreements with agencies or organizations with approved need analysis systems under which the Secretary provides the edits to the agencies or organizations and the agencies and organizations indicate to institutions the applications that the edits select for verification.

(2) The institution shall require every applicant to verify the applicable items specified in Sec. 668.56 if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or requests the institution to certify his or her application for a GSL loan; and

(ii) The institution does not receive—

(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated by the applicant submitting an application to an agency or organization with an approved need analysis system that has an agreement with the Secretary described under paragraph (a)(1) of this section.

(3) If an institution believes that any information on an application used to calculate an EFC is inaccurate, it shall require that the applicant verify the information that it believes is inaccurate.

(4) If an applicant is selected to verify the information on his or her application under paragraph (a)(1) of this section for an award year, the institution shall require the applicant to verify the information on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for an award year.

(b) Exclusions from verification. (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has documentation that conflicts with information reported by an applicant or believes that the information reported by the applicant is incorrect, it does not have to verify applications of the following applicants:

(i) An applicant who is a legal resident of and, in the case of a dependent student, whose parents are also legal residents of the Trust Territory of the Pacific Islands (which includes the Marshall Islands and the Caroline Islands), Guam, American Samoa, or the Northern Mariana Islands.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in Sec. 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, all pages of the applicant's SAR.

(3) An applicant need not document spouse information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

Sec. 668.55 Updating Information

(a)(1) Unless the provisions of paragraphs (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If the number of family members in the applicant's household, the number of those household members attending postsecondary educational institutions, or the applicant's dependency status changes as a result of a change in the applicant's marital status, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution or to the Secretary.

(c) If an applicant has received Pell Grant, campus-based, or GSL program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending post-secondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant or campus-based program assistance or certifying a GSL loan application; and

(2) Is not required to adjust the Pell Grant or campus-based program assistance previously awarded to the applicant for that award year, or any previously certified GSL loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

(2) If the institution has previously certified a GSL loan application for an applicant, the applicant shall not update his or her dependency status on the GSL loan application.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

Sec. 668.56 Items to be verified.

(a) Except as provided in paragraphs (b), (c), (d), (e), (f), and (g) of this section, an institution shall require an applicant selected for verification under Sec. 668.54(a)(1) or (2) to submit acceptable documentation described in Sec. 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year.

(2) U.S. income tax paid for the base year.

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant's parents if—

(A) The applicant's parents are single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The factors relating to an applicant's independent student status.

(6) Untaxed income and benefits for the base year including—

(i) U.S. income tax deduction for a married couple if both work;

(ii) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive an SAR and the institution has information showing, or has reason to believe, that those benefits were received;

(iii) Child support if the institution has information showing, or has reason to believe, that child support was received;

(iv) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account; and

(v) The following other untaxed income and benefits:

(A) Untaxed portions of unemployment compensation.

(B) Untaxed dividends.

(C) Untaxed capital gains.

(D) Foreign income exclusion if the institution has information showing, or has reason to believe, that the foreign income was excluded.

(E) Earned income credit.

(b) For a GSL applicant selected for verification under Sec. 668.54(a)(1) or (2) of this section—

(1) If the GSL applicant's adjusted gross family income is $30,000 or less, the institution shall require the applicant to submit acceptable documentation described in Sec. 668.57 that verifies—

(i) The adjusted gross family income; and

(ii) The factors relating to an applicant's independent student status;

(2) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution uses the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in Sec. 668.57 that verifies—

(i) The adjusted gross family income;

(ii)(A) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant's parents if—

(1) The applicant's parents are single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(2) The applicant's parents are married and the aggregate number of family members is greater than three; or

(B) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(1) The applicant is single, divorced, separated or widowed and the number of family members is greater than one; or

(2) The applicant is married and the number of family members is greater than two;

(iii) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one; and

(iv) The factors relating to an applicant's independent student status; or

(3) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution does not use the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in Sec. 668.57 that verifies the applicable items set forth in paragraph (a) of this section.

(c) For the Pell Grant Program, if an applicant is a dependent student and the applicant's income for the base year is used to calculate the applicant's EFC (student aid index), an institution need not require the applicant to verify his or her base year adjusted gross income, U.S. income tax paid, and untaxed income and benefits.

(d) If an applicant selected for verification submits an SAR to the institution or the institution receives an output document as described in Sec. 668.54(a)(2)(ii)(B) within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under Sec. 668.54(a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household; or

(2) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions.

(e) If the number of family members in the household, the number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions, independent student status, or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(f) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment from its own records, the institution need not require the applicant to verify this information.

(g) If the applicant, and the applicant's spouse, or the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency which determines their eligibility for that income or benefits by means of a "financial needs test", the institution need not require the applicant to verify untaxed income and benefits.

(Authority: 20 U.S.C. 1095)

(Approved by the Office of Management and Budget under control number 1840-0570)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 29398, Aug. 15, 1986]

Sec. 668.57 Acceptable documentation.

(a) AGI and U.S. income tax paid. (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify adjusted gross income and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2 received by the parent whose income is being taken into account or a copy of the parent's IRS Schedule W filed with the parent's tax return if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2 he or she received or a copy of the student's IRS Schedule W filed with the student's tax return if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who is required in paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of a U.S. income tax return or an IRS listing of tax account information of a relevant individual, the documentation set forth in paragraph (a)(4) of this section if the relevant individual for the base year—

(i) Has not filed a U.S. income tax return but has filed an income tax return with a central government outside the United States or with the Commonwealth of Puerto Rico;

(ii) Has not filed and will not file a U.S. tax return;

(iii) Has been granted a filing extension by the IRS; or

(iv) Has requested the IRS to provide him or her with a copy of the tax return or a listing of tax account information and the IRS cannot locate the return or provide a listing of tax account information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a copy of the signed income tax return filed by that individual for the base year with the central government or with the Commonwealth of Puerto Rico;

(ii) For an individual described in paragraph (a)(3)(ii) of this section, a statement signed by that individual certifying that he or she has not filed nor will file a U.S. income tax return for the base year and providing for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the I.R.S. for the base year, or a copy of IRS's approval of an extension beyond the automatic four-month extension if the individual requested the additional extension of the filing time; and

(B) A copy of each IRS Form W-2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iv) For an individual described in paragraph (a)(3)(iv) of this section—

(A) A copy of each IRS Form W-2 that the individual received for the base year; or

(B) For a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(iii) of this section to provide to it a copy of his or her completed U.S. income tax return when filed. When an institution receives the copy of the return, it may reverify the adjusted gross income and taxes paid of the applicant and his or her family.

(6) If an individual who is required to submit an IRS Form W-2 or a copy of IRS Schedule W under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work as stated on the application, the source of that income, and the reason that the IRS Form W-2 or Schedule W is not available in a timely manner.

(b) Number of family members in household. An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each household member in the family and the relationship of that household member to the applicant.

(c) Number of family household members enrolled in postsecondary institutions. (1) Unless the institution believes that the information included on the application regarding the number of household members in the applicant's family enrolled in postsecondary institutions is inaccurate, the institution shall require an applicant selected for verification to verify that information by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, which lists—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of each institution.

(2) If the institution believes that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(d) Independent student status. (1) Unmarried applicant. Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require an unmarried applicant selected for verification to submit to it—

(i) A copy of the base year, Federal income tax return of the applicant's parent(s) signed by the filer, or by one of the filers if a joint return, or if the parent(s) did not file and will not file a tax return for that year, a statement to that effect signed by the parent(s); and

(ii) A statement signed by the applicant and the applicant's parent(s) certifying that—

(A) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(B) The parent(s) will not and did not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year or the base year; and

(C) The applicant did not and will not live with the parent(s) for more than forty-two days in either of those years.

(2) Married applicant. Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require a married applicant selected for verification to submit to it a written statement signed by the applicant and the applicant's parent(s) certifying that—

(i) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(ii) The parent(s) did not and will not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year; and

(iii) The applicant did not and will not live with the parent(s) for more than forty-two days in that year.

(3) Conflicting documentation. (i) Except as provided in paragraph (d)(3)(ii) of this section, if the Secretary or an institution has conflicting documentation regarding any of the three factors used to determine independent student status, the institution shall require an applicant selected for verification to submit to it—

(A) The documentation specified in paragraph (d)(1) of this section if the applicant is unmarried; or

(B) The documentation specified in paragraph (d)(2) of this section if the applicant is married.

(ii) The institution may consider the applicant's independent student status verified even though it or the Secretary has conflicting documentation if the applicant's parents—

(A) Are deceased;

(B) Are physically or mentally incapacitated; or

(C) Cannot be located because either their address is unknown or they are residing in a country outside the United States and cannot be contacted by normal means of communication.

(4) No conflicting documentation—Pell Grant Program. For purposes of the Pell Grant Program, if the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status—

(i) The institution shall consider the independent student status of an applicant to be verified without requiring documentation or statements from the applicant or his or her parents if the applicant will be at least 23 years old on May 31 of the second calendar year of the award year for which aid is requested;

(ii) The institution shall consider the independent student status of a married applicant who is or will be under 23 years old on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant's parents have signed the applicant's original application; or

(B) The applicant's parents are unable or unwilling to provide the required statements; or

(iii) The institution shall consider the independent student status of an unmarried applicant who is under 23 years of age on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant had sufficient resources to support himself or herself and any dependents for the base year; and

(B) The applicant's parents are unable or unwilling to provide the tax return or statements required in paragraph (d)(1) of this section. For the purpose of this provision, the Secretary considers that the parent(s) have provided the statements required in paragraph (d)(1) of this section if the parent(s) signed the applicant's original application.

(5) No conflicting documentation—campus-based and GSL programs. For purposes of the campus-based and GSL programs—

(i) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are not unable to provide the requested information and documentation, the institution may either—

(A) Require an applicant to provide to it the documents specified in paragraph (d)(1) of this section if the applicant is unmarried, or specified in paragraph (d)(2) of this section if the applicant is married, regardless of the circumstances concerning the age of the applicant or the willingness of the applicant's parents to provide the required tax return and statement; or

(B) Follow the requirements contained in paragraph (d)(4) of this section; or

(ii) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are unable to provide the requested information and documentation, the institution must follow the requirements contained in paragraph (d)(4) of this section.

(e) Untaxed income and benefits. An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in Sec. 668.56(a)(6)(i), (iv), and (v) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or will be filed, a statement signed by the relevant individuals certifying that no tax return was filed or will be filed and providing the sources and amount of untaxed income and benefits specified in Sec. 668.56(a)(6)(v);

(2) Social security benefits by submitting to it—

(i) If the applicant's SAR requires that the applicant verify his or her social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant's parents, the applicant, and the parent's children in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR, the document in paragraph (e)(2)(i) of this section or, at the institution's option, a statement signed by the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A written statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution believes that the information provided is inaccurate, a document such as—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(f) For the purpose of this section, an institution may accept in lieu of a copy of a Federal income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 29398, Aug. 15, 1986]

Section 668.58 Interim disbursements.

(a)(1) If an institution has documentation that indicates that the information included on an application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the Secretary does not and the institution may not—

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application.

(2) If an institution does not have documentation that indicates that the information included on an application is inaccurate, until the applicant is verified or corrects the information included on his or her application, the Secretary or the institution—

(i) May withhold payment of Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, NDSL, or SEOG funds for the applicant's first payment period; and

(B) May employ an eligible student under the CWS Program until sixty (60) days after the date the applicant enrolled in that award year; and

(iii)(A) May withhold certification of the applicant's GSL loan application; or

(B) May certify the GSL loan application; and

(iv) Shall not disburse a GSL loan check.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii) of this section, it shall be liable for any overpayment discovered as a result of the verification process.

(c) An institution may not hold any GSL check under paragraph (a)(2) of this section for more than forty-five (45) days. If the applicant does not complete the verification process within the forty-five (45) day period, the institution shall return the check to the lender.

(d)(1) If the institution receives a GSL loan check in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated in subsequent disbursements for that period of instruction, the institution shall process the check and notify the lender to reduce the subsequent disbursements.

(2) If the institution receives a GSL loan check in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds cannot be eliminated in subsequent disbursements for that period of instruction, the institution shall return the check to the lender.

(Authority: 20 U.S.C. 1094)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 29398, Aug. 15, 1986; 51 FR 29920, Aug. 21, 1986]

Section 668.59 Consequences of a change in application information.

(a) For the Pell Grant Program—

(1) Except as provided in paragraphs (a)(2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (student aid index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant with a reported student aid index (SAI) of zero on his or her SAR to resubmit that SAR to the Secretary if it determines that the applicant's student aid index remains at zero on the basis of the verified information and the "Zero SAI Charts" that the Secretary publishes in the FEDERAL REGISTER.

(3) An institution need not require an applicant to resubmit his or her SAR to the Secretary, need not recalculate his or her EFC, or need not adjust his or her Pell Grant award if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors reflecting a change in dollar items of less than $200.

(b) For the Pell Grant Program—

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraphs (a)(2) and (3) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Calculate the applicant's Pell Grant award on the basis of the EFC included on the corrected SAR; and

(C) Disburse any additional funds under that award only if the applicant provides it with the corrected SAR.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution—

(A) May disburse the applicant's Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her SAR to the Secretary; and

(B) Except as provided in Sec. 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the applicant provides it with the corrected SAR.

(c) For the campus-based and GSL programs—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant's expected family contribution; and

(ii) Adjust the applicant's financial aid package for the campus-based and GSL programs to reflect the new EFC if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or just his or her aid package if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii)(A) No errors in dollar items or errors reflecting a change in dollar items of less than $800; or

(B) No errors in dollar items or errors reflecting a change in dollar items of less than $200 if the institution uses the Pell Grant Program's SAI as the applicant's EFC.

(d) If a GSL applicant reports an adjusted gross family income of less than $30,000 and verification shows that the adjusted gross family income is over $30,000, the institution shall calculate an EFC for the applicant and determine his or her financial need for a loan.

(e) If the institution selects an applicant for verification for an award year who previously received a loan under the GSL Program for that award year, and as a result of verification, the suggested loan amount is reduced by $200 or more, the institution shall comply with the procedures for notifying the borrower and lender specified in Sec. 668.61(b).

(f) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the applicant's name, social security number, and other relevant information to the Secretary.

(Approved by the Office of Management and Budget under control number 1840-0570)

(Authority: 20 U.S.C. 1094)

Section 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in Sec. 668.57.

(b) For purposes of the campus-based and GSL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution shall not—

(A) Disburse any additional NDSL, or SEOG funds to the applicant;

(B) Continue to employ the applicant under CWS;

(C) Certify the applicant's GSL application; or

(D) Process a GSL check for the applicant;

(ii) The institution shall return to the lender any GSL check payable to the applicant; and

(iii) The applicant shall repay to the institution any NDSL or SEOG payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding the prescriptions listed in paragraph (b)(1)(i) of this section; and

(3) An institution may not hold any GSL check under paragraph (b)(1) of this section for more than forty-five (45) days. If the applicant does not complete verification within the forty-five (45) day period, the institution must return the check to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the appropriate deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication in the FEDERAL REGISTER. If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in 34 CFR 690.61, payment must be based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is the same or higher than the student aid index on the original SAR; and

(2) If the applicant does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, shall not process any subsequent application for campus-based and GSL program assistance of an applicant who has been requested to provide information until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies during that award year, or before the deadline date for completing the verification process if that date extends into the subsequent award year, without completing the verification process, the institution shall not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify the applicant's GSL loan application or process a GSL check for the applicant; or

(3) Consider any funds it disbursed to that applicant under Sec. 668.58(a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

Section 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under Section 668.58(a)(2)(ii) more than he or she was eligible to receive under the Pell Grant, NDSL, or SEOG programs, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) If the applicant does not return the overpayment, making restitution from its own funds by the earlier of the following dates:

(A) Sixty days after the applicant's last day of enrollment.

(B) The last day of the award year in which the institution disbursed Pell Grant, NDSL, or SEOG funds to the applicant.

(b) If the institution determines as a result of verification that an applicant received for an award year a GSL of $200 or more in excess of the student's financial need for the loan, the institution shall notify the student and the lender of the excess amount within thirty (30) days of the institution's determination that the borrower is ineligible for such amounts.

(Authority: 20 U.S.C. 1094)

Subpart F-Misrepresentation

Source: 51 FR 43324, Dec. 1, 1986, unless otherwise noted.

Sec. 668.71 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the Secretary may initiate a proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

Sec. 668.72 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State, or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by—

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental officials for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

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(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(k) The nature of extent of any prerequisites established for enrollment in any course; or

(l) Any matters required to be disclosed to prospective students under Sec. 668.44 of this part.

(Authority: 20 U.S.C. 1094)

Sec. 668.73 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(Authority: 20 U.S.C. 1094)

Sec. 668.74 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment.

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

(Authority: 20 U.S.C. 1094)

Sec. 668.75 Procedures

(a) On receipt of a written allegation or complaint from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in Sec. 668.81 reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to participate in the Title IV, HEA programs according to the procedures set forth in Subpart G, or

(2) Take other appropriate action.

(Authority: 20 U.S.C. 1094)

Subpart G-Fine, Limitation, Suspension and Termination Proceedings

Source: 51 FR 43325, Dec. 1, 1986, unless otherwise noted.

Sec. 668.81 Scope and special definitions.

(a)(1) This subpart establishes rules for the imposition of a fine upon, or for the suspension, limitation or termination of an otherwise eligible institution's participation in any or all of the Title IV, HEA programs.

(2) An "otherwise eligible institution" is an institution that the Secretary has determined—

(i) Satisfies the appropriate definition of the term "public or private nonprofit institution of higher education", "proprietary institution of higher education," "postsecondary vocational institution" or "vocational school" set forth in Subpart A of this part; and

(ii) Initially satisfies the factors of financial responsibility and standards of administrative capability set forth in Subpart B of this part.

(b) This subpart applies to an institution which violates any Title IV, HEA program statute, regulation, special arrangement, agreement or limitation prescribed under authority of Title IV of the HEA;

(c) This subpart does not apply to a determination that—

(1) An institution of higher education fails at any time to meet the statutory definition set forth in section 435, 481 or 1201 of the HEA;

(2) A vocational school fails at any time to meet the statutory definition set forth in section 435(c) of the HEA; or

(3) An institution fails to qualify for initial certification to participate in any Title IV, HEA program because it does not meet the fiscal and administrative standards set forth in Subpart B of this part.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to an institution (i.e., advance payments and payments by way of reimbursements) participating under any Title IV, HEA program.

(e) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1954 (42 U.S.C. 2000d-4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title DC of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 et. seq.)	45 CFR Part 90.

(f) The following definitions apply to this subpart:

Designated department official: An official of the Education Department to whom the Secretary has delegated responsibilities indicated in this subpart.

Funds: Any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all Title IV, HEA programs to an institution or to or on behalf of students enrolled and attending an institution.

(Authority: 20 U.S.C. 1094)

Sec. 668.82 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs.

(c) An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for a fine, or the suspension, limitation or termination of the eligibility of the institution to participate in those programs.

(d)(1) An institution violates its fiduciary duty if-

(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been-

(A) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(2) A violation for a reason contained in paragraph (d)(1) of this section of an institution's fiduciary duty is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

(Authority: 20 U.S.C. 1070 et seq.)

(e)(1) The debarment of a participating institution under Executive Order (E.O.) 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, terminates the institution's eligibility to participate in the Title IV HEA programs for the duration of the debarment.

(2)(i) The suspension of a participating institution under E.O. 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, suspends the institution's eligibility to participate in the Title IV, HEA programs.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(3)(i) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(ii) The Secretary initiates a fine, limitation, suspension, or termination action under 34 CFR Part 668, Subpart G, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554-557.

(Authority: E.O. 12549; 20 U.S.C. 1082 (a)(1) and (h)(1), 1094(c)(1)(D), 3474)

Sec. 668.83 Emergency action.

(a) Scope and consequences. The Secretary may take an emergency action against an institution under which the Secretary withholds funds from the institution or its students and withdraws the authority of the institution to obligate funds under any or all Title IV, HEA programs if the Secretary—

(1) Receives information, determined by the official to be reliable, that the institution is violating applicable laws, regulations, special arrangements, agreements or limitations.

(2) Determines that immediate action is necessary to prevent misuse of Federal funds; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures set forth in this subpart for suspension, limitation or termination.

(b) Procedures. A designated department official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the emergency action and the basis on which the action is taken. The notice also states that the institution has an opportunity to show cause that the emergency action is unwarranted. The effective date of the action is the date on which the notice is received by the institution.

(c) Duration. An emergency action may not exceed 30 days unless a suspension, limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) Opportunity to show cause. The Secretary provides the institution, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1094)

Sec. 668.84 Fine proceedings.

(a) Scope and consequences. The Secretary may impose a fine of up to $25,000 per violation on an institution that—

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

(b) Procedures. (1) A designated department official begins a fine proceeding by sending the institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which must be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated department official receives by that date a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) An administrative law judge conducts a hearing on the record in accordance with Sec. 668.88.

(c) Expedited hearings. With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Sec. 668.85 Suspension proceedings.

(a)(1) Scope and consequences. The Secretary may suspend the eligibility of an institution to participate in any or all of the Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any provision of any regulation or agreement implementing that Title.

(2) The suspension may not exceed 60 days unless—

(i) The institution and the Secretary agree to an extension if the institution has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under Sec. 668.86.

(b) Procedures. (1) A designated department official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility to participate, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated department official receives by that date a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No suspension takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with Sec. 668.88.

(Authority: 20 U.S.C. 1094)

Sec. 668.86 Limitation or termination proceedings.

(a) Scope and consequences. The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in Sec. 668.93 and 668.94, respectively.

(b) Procedures. (1) A designated department official begins a limitation or termination proceeding by sending an institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility to participate, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and, in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which must be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives by that date a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No limitation or termination takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with Sec. 668.88.

(c) Expedited hearing. With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Sec. 668.87 Pre-hearing conference.

(a)(1) A pre-hearing conference shall be convened by the administrative law judge if he or she thinks that such a conference would be useful, or if requested by—

(i) The designated department official; or

(ii) The institution.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) If agreed to by the administrative law judge, the designated department official and the institution, a pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

Sec. 668.88 Hearing on the record.

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

(b) The hearing process may be expedited as agreed by the administrative law judge, the designated department official and the institution. Procedures to expedite may include, but are not limited to, the following—

(1) A restriction on the number or length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A review limited to the written record; or

(4) A certification by the parties to facts and legal authorities not in dispute.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissable.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(4) The administrative law judge accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official shall make a transcribed record of the proceeding and shall make the record available to the institution upon its request and upon its payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(Authority: 20 U.S.C. 1094)

Sec. 668.89 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The administrative law judge is not authorized to issue subpoenas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(Authority: 20 U.S.C. 1094)

Sec. 668.90 Initial and final decisions-Appeals.

(a)(1) The administrative law judge shall issue a written initial decision to the institution and the designated department official by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing, if the administrative law judge does not request the parties to submit briefs; or

(iii) The date on which the administrative law judge terminates the hearing in accordance with Sec. 668.89(c)(3).

(2) The administrative law judge's decision must state whether the imposition of the fine, limitation, suspension or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution, the administrative law judge may, if appropriate, issue a decision to fine the institution or impose one or more limitations on the institution rather than terminating its eligibility to participate.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the administrative law judge finds that the owner of the institution itself or the chief executive officer of the institution was convicted of, or pled guilty to, a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, the administrative law judge must find that termination of the institution's eligibility to participate in the Title IV, HEA program is warranted; or

(ii) If the action brought against an institution involves its failure to provide a letter of credit or performance bond in the amount specified by the Secretary under Sec. 668.13, the administrative law judge must find that the amount of the performance bond or letter of credit established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable.

(iii) In a limitation, suspension or termination proceeding commenced on the grounds described in Sec. 668.15(b)(1) of this part, if the administrative law judge finds that the institution's GSL and SLS fiscal year default rate, as defined in Sec. 668.15(f) of this part, meets the conditions specified in Sec. 668.15(b)(1) of this part for initiation of limitation, suspension, or termination proceedings, the administrative law judge shall find that the sanction sought by the designated Department official is warranted, except that the administrative law judge shall find that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part.

(4) The administrative law judge shall base findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted by written submissions, findings of fact must be agreed to by the parties.

(b)(1) In a suspension proceeding, the Secretary reviews the administrative law judge's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) A suspension takes effect upon either the date on which notice of the suspension is received by the institution or the original proposed effective date stated in the designated department official's notice of intent to suspend, whichever is later.

(3) A suspension may not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In that case, the period may be extended until the completion of that proceeding including any appeal to the Secretary.

(c)(1) In a fine, limitation or termination proceeding, the administrative law judge's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless, within that 20 day period, the institution or the designated department official appeals the decision to the Secretary.

(2) An appeal is made by sending a written notice of appeal to the Secretary. This notice must be received by the Secretary within twenty days of the appealing party's receipt of the administrative law judge's initial decision. (The appealing party shall send a copy of its appeal notice to the other party.)

(d)(1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the administrative law judge should be overturned or modified.

(2) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(i) The evidence introduced into the record at the hearing;

(ii) Stipulations of the parties if the hearing consisted of written submissions; or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party when it submits its brief to the Secretary.

(e) The initial decision of the administrative law judge imposing a fine or limiting or terminating the eligibility of the institution to participate does not take effect pending the appeal.

(f)(1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted of only written submissions and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the administrative law judge's initial decision and includes a statement of the reasons for the decision, except that if the administrative law judge finds that the termination is warranted pursuant to Sec. 668.90 (a)(3)(i), the Secretary affirms that decision.

(Authority: 20 U.S.C. 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Sec. 668.91 Verification of mailing and receipt dates.

(a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that institution refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

Sec. 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, administrative law judge and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement; or

(ii) The gravity of its misrepresentation; and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

Sec. 668.93 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;
or

(d) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

Sec. 668.94 Termination.

(a) A termination—

(1) Ends an institution's eligibility to participate in any or all of the Title IV, HEA programs;

(2) Prohibits an institution or the Secretary from making or increasing Title IV, HEA program awards;

(3) Prohibits an institution from making any other new obligations against Title IV, HEA program funds; and

(4) Prohibits further guarantee commitments by the Secretary under the Guaranteed Student Loan or PLUS programs for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the Guaranteed Student Loan or PLUS programs (whether or not guarantee commitments have been issued by the Secretary or a guarantee agency for such disbursements):

(b) If an institution is terminated during a payment period, any student at the institution who has received an award or to whom a commitment has been made before the effective date of the termination may receive a payment for that payment period.

(c) For purposes of this section, a commitment—

(1) Under the Pell Grant and Campus-based programs, is defined in Sec. 668.25 and

(2) Under the Guaranteed Student Loan and PLUS programs, occurs when the Secretary or a guarantee agency advises the lender that the loan will be guaranteed.

(Authority: 20 U.S.C. 1094)

Sec. 668.95 Reimbursements, refunds and offsets.

(a) The designated department official, administrative law judge or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, which the institution improperly received, withheld, disbursed or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Guaranteed Student Loan or PLUS programs—

(i) Ineligible interest benefits, special allowances or other claims paid by the Secretary; and

(ii) Discounts, premiums or excess interest paid in violations of Part 682 or 683 of Title 34 of the Code of Federal Regulations; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds due to students under program regulations; and

(ii) Any grants, work-study assistance or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution.

(Authority: 20 U.S.C. 1094)

Sec. 668.96 Reinstatement after termination.

(a)(1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b) In order to be reinstated, an institution must-

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution has improperly received, withheld, disbursed or caused to be disbursed;

(2) Meet all the requirements for participation included in Subpart B; and

(3) Enter into a new participation agreement with the Secretary.

(c) The Secretary, within 60 days of receiving the reinstatement request-

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitation(s).

(Authority: 20 U.S.C. 1094)

(Approved by OMB under control #1840-0537)

Sec. 668.97 Removal of limitation.

(a) An institution whose eligibility to participate in any or all Title IV, HEA programs has been limited may not apply for removal of the limitation of its eligibility to participate before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary responds to the institution—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation(s).

(d) If the Secretary denies the request or established other limitation(s), the institution, upon request, is granted an opportunity to show cause why its eligibility to participate should be fully reinstated.

(e) The institution's request for a show cause meeting does not waive its right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation(s) pending the outcome of the meeting.

(Authority: 20 U.S.C. 1094)

Subpart H-Appeal Procedures for Audit Determinations and Program Review Determinations

Sec. 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal of an institution from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). (The Title

IV, HEA programs are listed in Sec 668.1(c)).

(b) This subpart applies to any institution (as defined in Sec. 668.1(b)) that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by Subpart G of this part or to a determination that-

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the Title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in Subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

(Authority: 20 U.S.C. 1094)

Sec. 668.112 Definitions.

As used in this subpart:

"Designated ED official" means an official of the Education Department to whom the Secretary has delegated the responsibilities referred to in this subpart.

"Final audit determination" means the written notice of a determination issued by a designated ED official based on an audit of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

"Final program review determination" means the written notice of a determination issued by a designated ED official and resulting from a program compliance review of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

(Authority: 20 U.S.C. 1094)

Sec. 668.113 Request for review.

(a) An institution seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated ED official issuing the final audit determination or final program review determination.

(b) The institution shall file its request for review and any records or materials admissible under the terms of Secs. 668.116 (e) and (f) of this subpart, no later than 45 days from the date it receives the final audit determination or final program review determination.

(c) The institution shall attach to the request for review a copy of the final audit determination or final program review determination, and shall-

(1) Identify the issues and facts in dispute; and

(2) State the institution's position together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

(Approved by OMB under Control Number 1840-0592)

Sec. 668.114 Notification of hearing.

(a) Upon receipt of an institution's request for review, the designated ED official arranges for a hearing on the record before an administrative law judge.

(b) Within 30 days of the designated ED official's receipt of an institution's request for review, the administrative law judge establishes a schedule for the submission of briefs by both the institution and the designated ED official.

(c) The submission of briefs and of accompanying evidence admissible under the terms of Secs. 668.116 (e) and (f) shall be scheduled to occur no later than 120 days from the date upon which the administrative law judge notifies the institution under paragraph (b) of this section.

(Authority: 20 U.S.C. 1094)

Sec. 668.115 Prehearing conference.

(a) In the event that the administrative law judge considers a prehearing conference necessary, he may convene a prehearing conference.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute. A prehearing conference consists of-

(1) A telephone conference call;

(2) An informal meeting of the parties with the administrative law judge; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

(Authority: 20 U.S.C. 1094)

Sec. 668.116 Hearing on the record.

(a) A hearing on the record is a process conducted by the administrative law judge whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the administrative law judge by the institution and by the designated ED official, unless the administrative law judge determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the administrative law judge.

(d) An institution requesting review of the final audit determination or final program review determination issued by the designated ED official shall have the burden of proving the following matters, as applicable-

(1) That expenditures questioned or disallowed were proper;

(2) That the institution complied with program requirements,

(e)(l) A party may submit as evidence to the administrative law judge only materials within one or more of the following categories:

(i) ED audit reports and audit work papers for audits performed by the United States Education Department Office of Inspector General.

(ii) Institutional audit work papers, records, and other materials, if the institution provides those work papers, records, or materials to ED no later than the date by which it was required to file its request for review in accordance with Sec. 668.113.

(iii) ED program review reports and work papers for program reviews.

(iv) Institutional records and other materials provided to ED in response to a program review, if the records or materials were provided to ED by the institution no later than the date by which it was required to file its request for review in accordance with Sec. 668.113.

(v) Other ED records and materials if the records and materials were provided to the administrative law judge no later than 3 days after the institution's filing of its request for review.

(2) A party desiring to submit as evidence any materials described in paragraph (e)(1) of this section shall submit that evidence with its initial brief.

(f) The administrative law judge shall accept only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence which shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) include-

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution other than the institution bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution bringing the appeal in the program areas at issue in the appeal.

(g)(l) The administrative law judge may schedule an oral argument if he determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated ED official shall make a transcribed record of the proceedings and shall make that record available to the institution upon its request and upon its payment of a fee consistent with that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(h) Any oral argument shall take place in the Washington, D.C. metropolitan area.

(i) Either party may be represented by counsel.

(Authority: 20 U.S.C. 1094)

Sec. 668.117 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The administrative law judge is not authorized to issue subpoenas or compel discovery, as provided for in the Federal Rules of Civil Procedure.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the administrative law judge.

(d) The administrative law judge is bound by all applicable statutes and regulations. The administrative law judge may not-

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

Sec. 668.118 Decision of the administrative law judge.

(a) Upon review of the parties' written submissions and termination of the oral argument if one is held, the administrative law judge issues a written decision.

(b) The administrative law judge's decision states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part.

(c) The administrative law judge bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

(Authority: 20 U.S.C. 1094)

Sec. 668.119 Appeal to the Secretary.

(a) Within 15 days of its receipt of the initial decision of the administrative law judge, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the administrative law judge should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by-

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 15 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

(Authority: 20 U.S.C. 1094)

Sec. 668.120 Decision of the Secretary.

(a) Following an appeal from the administrative law judge's initial decision, the Secretary issues a decision that affirms or, for good cause shown, modifies, remands, or overturns the initial decision of the administrative law judge.

(b) If the Secretary modifies, remands, or overturns the initial decision of the administrative law judge, the Secretary issues a decision that-

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the administrative law judge for further review or determination of fact, becomes final upon its issuance.

(Authority: 20 U.S.C. 1094)

Sec. 668.121 Final decision of the Department.

(a) In the event that the initial decision of the administrative law judge is appealed, the decision of the Secretary is the final decision of the Department, unless the administrative law judge's decision is remanded by the Secretary.

(b) In the event that the initial decision of the administrative law judge is not appealed within the time limit specified in Sec. 668.119 (a), the initial decision automatically becomes the final decision of the Department.

(Authority: 20 U.S.C. 1094)

Sec. 668.122 Determination of filing, receipt, and submission dates.

(a) The request for review, appeals, and other written submissions referred to in this subpart may be either hand-delivered or mailed.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates shall be based on either the date of hand-delivery or the date of receipt indicated on the original U.S. Postal Service return receipt.

(Authority: 20 U.S.C. 1094)

Sec. 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or final program review determination, ED will take steps to collect the debt at issue or otherwise effect the determination that was the subject of the request for review.

(Authority: 20 U.S.C. 1094)

[FR Doc. 87-18352 Filed 8-11-87; 8:45 a.m.]

(Authority: 20 U.S.C. 1082, 1094)

Appendix A-Track Record Disclosure Forms

This appendix provides forms for institutions to use to disclose to prospective students the information required by 34 CFR 668.44(c)(1)(ii) through (iv). The use of these forms is required by 34 CFR 668.44(f).

An institution shall use Form I in connection with a program offered for a vocational, trade, or career occupation for which there exists a State licensure or certification examination required by the State for employment in the occupation. For all other programs for which disclosures under 34 CFR 668.44(c)(1)(ii) through (iv) are required, the institution shall use Form II.

Form I:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information—

____%, or _____ of the ______ students in this program scheduled to graduate in (year) went on to graduate;

*____%, or ____ of the ____ students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered); and

____%, or ____ of the ____ students of this program taking the (name of test) administered by the State of (name of State in which the program is being offered to the student) in (year) passed that examination.

I have read and understood the graduation rate, licensing or certification examination pass rate, and job placement rate information provided above.

Date

(Prospective student's signature)

*We have been told by ____ of the students that were scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of the students scheduled to graduate in that year have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

Form II

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information—

____%, or ____ of the ____ students in this program scheduled to graduate in (year) went on to graduate; and

*____%, or ____ of the ____ students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered).

I have read and understood the graduation rate and job placement rate information provided above.

Date

(Prospective student's signature)

*We have been told by ____ of the students scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of the students scheduled to graduate in that year have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

Appendix B-Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Part III Chapter 3-Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.\1\

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. Those circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objective or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decisionmaking or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

\1\ If the auditor is not fully independent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.\2\

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures or the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial of opportunity to obtain explanations by officials and employees of the governmental organizations, program, or activity under audit.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditor's judgment as to the appropriate content of the audit report.

7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

Appendix C-Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

"Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standards than those required for the practice of public accountancy by the regulatory authorities of the States."\1\

\2\ Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's report.

\1\ Letter (B-148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to "Secretary" means the head of the department or agency.

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only noncompliance need be reported—it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

Appendix D—Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the GSL and SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under Sec. 668.15 may avoid those sanctions by demonstrating that it has made a diligent effort to implement the measures included in this Appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a pro rata refund policy, as defined in 34 CFR 682.606(b)(2) and (c).

7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to-

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and

(ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any GSL or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:

(a) As part of the initial loan counseling provided to a GSL or SLS borrower—

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of GSL and SLS program loans, including—

(i) The stated interest rate on the borrower's loans;

(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower's rights and responsibilities in the GSL and SLS loan programs including—

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower—

(i) (A) General information on the average indebtedness of student borrowers who have obtained GSL or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on GSL and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (e.g., loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a GSL or SLS borrower—

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

Note.-This appendix is not to be codified in the Code of Federal Regulations.

Appendix-Summary of Comments and Responses

June 5, 1989 Federal Register

Section 668.15 Additional factors for evaluating administrative capability.

Comments: The majority of commenters objected to the provisions in this section that would authorize the initiation of an LST action against a school with a GSL and SLS default rate greater than 20 percent. Many commenters objected to use of this criterion to eliminate a school from participation in all Federal student financial aid programs. They believed that this factor alone was not an adequate indicator of a school's administrative capability. Many commenters also believed that a school should have the option of implementing a default reduction plan to reduce its default rate prior to action by the Secretary to terminate the school.

Discussion: Several changes have been made. The Secretary hasrevised this section to implement a multi-tiered approach that authorizes the initiation of an LST action beginning in 1991 if the school's default rate exceeds 60% (this standard to be lowered to 40% in increments of 5% by 1995), or if that rate exceeds 40% and has not been reduced by an increment of at least 5% from the preceding year's rate. Under Sec. 682.604 and 682.606, schools with default rates over 30% would be subject to two mandatory default reduction measures—a pro rata refund policy and delayed certification of loan applications for first-time borrowers. Finally, under this section, schools with default rates over 20% would be required to implement default management plans established by the Secretary on a case-by-case basis, with components of the plan being drawn from Appendix D, recommendations of the school and guarantee agencies, and other sources. The school would be provided an opportunity for an informal hearing prior to imposition of a plan.

Comments: Several commenters disagreed with the use of a fiscalyear default rate. They thought that a cumulative rate or a rate that reflected a longer time frame would be more equitable. Other commenters urged the use of a dollar-based rate, rather than a borrower-based rate, and a number of commenters urged that the rate take account of post-default collections. Some commenters also expressed concern about the quality of available data on defaults.

Discussion: No change has been made. The Secretary believes that using a fiscal year default rate is more equitable than using a cumulative rate because it does not penalize a school for a high default rate incurred before it took steps to reduce defaults. Indeed, the positive results of actions taken by a school to reduce its default rate would be readily evident from its fiscal year rates, but not from its cumulative rate. Further, a default that takes place more than two years after the borrower leaves school is unlikely to be attributable to the actions of the school and should therefore not be charged to the school.

A borrower-based rate has been retained in preference to a dollar-based rate to avoid numerous technical issues inherent in the latter approach, such as the calculation of outstanding balances, attribution of payments, capitalization of interest, and the like. A dollar-based rate would also tend to unfairly and artificially reduce the rates for longer programs, since graduates of those programs have loan balances that are much larger, relative to the loan balances of default-prone dropouts, than the graduates of shorter programs. Recognizing past problems with the quality of default-related data submitted to the Department by guarantee agencies, the Secretary has recently revised the reporting requirements for guarantee agencies to ensure that the data collected from all guarantee agencies on which actions would be taken under these regulations is both accurate and complete.

Comments: One commenter asked how deferments are treated in the default rate calculation.

Discussion: No change has been made. It is the entry of a loan into repayment that is relevant to the default rate calculation. Subsequent deferments are considered as falling within the repayment period. The end of a deferment period does not result in the borrower "entering repayment," even though the duty to make payments resumes at that time, since the borrower is considered to have been in repayment throughout the deferment period. Thus, a deferment granted a borrower after entering repayment on a loan in a given fiscal year is ignored in calculating the school's rate for that fiscal year. This is necessary both because not all deferments appear on the "tape dump" (the current source of the Secretary's default information) and because a default by a borrower after leaving deferment status may be too removed in time from the borrower's attendance at the school to be fairly charged to the school.

Comments: Many commenters claimed that it is unfair to place the burden of proof on the school to justify a high default rate. One commenter representing numerous lenders supported placing the burden of proof on the school, but recommended that a 50% default rate be used to trigger this rather than the 20% rate proposed in the NPRM. Many commenters objected to excluding the composition of the student body as an acceptable explanation for a high default rate. Other commenters wanted schools to have the option to deny certification of a loan, as well as require cosigners or credit checks for borrowers, to enable them to refuse loans to likely defaulters.

Discussion: A change has been made. Section 668.90 has been revised to clarify the defense that may be used to avoid LST sanctions. The Secretary believes that the burden of proof is appropriately placed on the school to demonstrate its administrative capability when a high default rate gives rise to a strong inference that this capability is lacking. At the high default rates specified in the final rule, this inference clearly arises. The recommendation that schools be allowed to require cosigners or credit checks, and to refuse to certify applications for otherwise eligible Stafford and SLS borrowers, would require legislative changes to implement, and thus are beyond the scope of these regulations.

Comments: Several commenters were disturbed by the possibility that schools with very few borrowers would be subject to sanctions based on their default rates.

Discussion: A change has been made. The Secretary recognizes that schools with very few borrowers could be placed at a disadvantage if they are judged under the default rate formula outlined in the NPRM, so he has revised that provision to evaluate a school with 30 borrowers or less entering repayment in a fiscal year based on a "rolling" three-year average default rate. In addition, it should be noted that an LST action allowed by this regulation against high default rate schools is not mandatory, and could be declined if a school's default volume is so low that the Department's resources would be more effectively employed in other ways.

Comments: A number of commenters recommended that the default rate calculation not treat as defaults, loans on which the borrowers begin or resume repayment after default.

Discussion: No change has been made. The fiscal year default rate is designed to yield information as to a school's performance in default-related matters. The use of post-default collection information would reduce the usefulness of the rate for this purpose by introducing factors unrelated to a school's default-related performance, such as the guarantor's effectiveness in collecting defaulted loans.

Comments: Several commenters asked whether a school would be given "credit" for defaulted loans that are purchased by that institution.

Discussion: A change has been made. The Secretary believes that a payment made by a school or related party to avoid a default is not an appropriate basis for excluding a loan from a school's default rate, and has revised this section to reflect that position.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

Comments: A number of commenters suggested that it would be inappropriate and unfair to establish, under proposed Sec. 668.22(a)(3) (i) and (ii), two distinct refund attribution formulas-one for GSL, SLS, and PLUS loan recipients, and one for other students.

Discussion: A change has been made. Since the proposed revisions to Sec. 668.22 were based on the application of a pro rata requirement to all schools, these regulations do not revise current Sec. 668.22. Pursuant to Sec. 682.606(b)(2) of these final regulations, a school is required to adopt a pro rata refund policy as one of two "core" default reduction measures only if its default rate exceeds 30%, and then only for certain borrowers and academic periods.

Section 668.44 Institutional information

Comments: A number of commenters suggested that the disclosures required by Sec. 668.44 (c) through (f) of the NPRM should be reserved for institutions having "unacceptable" default rates. Many commenters agreed that the disclosures are needed, but suggested that they apply to all programs and all schools. Several commenters supported the Secretary's proposal to target these disclosures to vocational training programs, particularly given the aggressive marketing techniques employed by many trade and technical schools.

Discussion: No change has been made. While the provisions of current Sec. 668.44 (a) and (b) are applicable to all schools, the Secretary believes that the dropout rate, placement rate, and State licensing examination pass rate disclosures, specified in Sec. 668.44 (c) through (f), should be mandated only for a school that offers either an undergraduate non-baccalaureate trade program or another program (whether or not undergraduate non-baccalaureate) for which it makes a claim regarding job placement in order to attract prospective students. As stated in the preamble to the NPRM, the Secretary believes that adequate and accurate information on these matters is of critical importance to prospective students evaluating the quality of such programs. It should be noted that the provisions of Sec. 668.44 (c) through (f) would not apply to a program that is primarily intended as preparatory for, and acceptable towards, a baccalaureate or equivalent level degree (e.g., Associate of Arts degree programs offered by community colleges), as distinguished from a course of study designed to provide a complete vocational training program.

Comments: Many commenters expressed concerns about the administrative burden imposed by the information collection and disclosure activities required by Sec. 668.44 (c) through (e), and by the requirement that a school utilize and maintain the forms required by Sec. 668.44(f) and Appendix A to Part 668. As a result a number of commenters recommended that the disclosures specified in the NPRM only be required of schools having unacceptable default rates.

Discussion: No change has been made. By statute, a school must disclose dropout rate, placement rate, and State licensing examination rate information for any programs as to which the school makes a marketing claim regarding job placement. See section 487(a)(8) of the HEA. This requirement applies to high default and low default schools alike. Given the fact that undergraduate nonbaccalaureate vocational training programs are marketed and purchased almost exclusively for their value in imparting employable vocational skills, the intent of section 487(b)(8) can be achieved only if the information listed in Sec. 668.44 (c) through (f) is disclosed for each program of that type. Moreover, it is apparent that the market forces that should operate to reward effective programs and weed out the ineffective ones are not currently working. The Secretary believes that more informed consumer choice will do much to correct that problem, and thereby substantially reduce defaults, but this can only be accomplished if consumers have access to the information required under these provisions for all programs of this nature, good and bad. The Secretary, in Sec. 668.44(f), has also specified that the required information described in Sec. 668.44(c) (2) through (4) be disclosed to prospective students using the "track record" disclosure forms contained in Appendix A. The Secretary believes that the use of a standardized form, in an easy-to-read format and in language that can be readily understood by all students, will greatly enhance a prospective student's ability to fully consider the information provided, and to compare the various programs in which he or she may be interested.

Comments: One commenter indicated that a variety of factors could affect the decision of a graduate not to seek employment in the occupation for which the training was offered by the school. The commenter argued that the job placement rate calculation specified in Sec. 668.44(c)(3) should exclude these graduates.

Discussion: A change has been made. The Secretary agrees that there may be valid reasons why a graduate of a program does not seek employment in the occupation for which the training was offered. Section 668.44(c)(3) of these final regulations has been revised to allow a school to note in its disclosure the number of graduates who state in writing that they have chosen not to seek employent in the occupation for which they were trained. However, this provision does not allow the school to include a graduate who discontinues seeking such employment after an unsuccessful search.

Comments: One commenter recommended that the "completion rate" calculation in Sec. 668.44(c)(4) include as completions borrowers who leave school to accept employment in the occupation for which the training was offered.

Discussion: A change has been made. Section 668.44(c)(4) has been revised to include as completions in the completion rate calculation those students who have not successfully completed the program (i.e., graduated), but who have obtained full-time employment in the occupation for which the training was offered within 150% of the normal time for completion of the program.

Comments: One commenter suggested that, in using the documents specified in Appendix A to Part 668, as required by Sec. 668.44(f), accommodation should be made for institutions that serve largely Spanish-speaking populations.

Discussion: A change has been made. Section 668.44(f) has been revised to permit the use of a foreign language version of the forms for students whose primary language is not English.

Comments: One commenter recommended that the Secretary, as part of these default reduction measures, require lenders to disclose to borrowers information about the role that secondary markets play in the GSL, SLS, and PLUS programs. The commenter also suggested that lenders be required to give notice to the guarantor, the school, and the student whenever a loan is sold or transferred to another eligible lender.

Discussion: No change has been made. While the Secretary agrees with the concerns expressed by the commenter, the suggestions are not within the scope of the final regulations. A separate NPRM, in which these issues will be addressed, is currently under development.

Section 668.90 Initial and final decisions-appeals

Comments: The comments received for this section mirrored the comments made under Sec. 668.15. The major issues addressed by commenters were the use of a 20% default rate as a trigger to limit, suspend, or terminate an institution from participation in all Title IV programs, the use of a fiscal year default rate, and the relevance of the composition of a school's student body.

Discussion: A change has been made. These issues have been addressed in the preamble and elsewhere in this Appendix. This section has been revised to include the elements of the Appendix D defense that a school may prove to avoid LST sanctions. This defense prevents termination of a school if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668.

Appendix D—Default Reduction Measures

Comments: The Secretary received broad support for the idea that a school with a high default rate should adopt default reduction measures such as those contained in Appendix D. A number of school commenters noted that many of these measures were already part of the standard procedures. Many commenters were concerned about the administrative burden that would be imposed on a school performing some of these measures.

Discussion: A change has been made. To assist schools in identifying those measures appropriate for their circumstances, the Secretary has grouped the measures according to the cause of default that each is meant to address. Any school with a default rate over 20% could be required to implement a default management plan containing some of the measures in Appendix D, as well as other appropriate default reduction steps. These steps would also be selected to address the school's circumstances. In this manner, the Secretary and the school will be able to select those measures that require only the administrative effort necessary to adequately and efficiently address the school's particular causes of default.

Comments: One commenter was concerned that a school might be prohibited by State law from withholding an academic transcript of a former student. Another commenter argued that withholding a transcript would be counterproductive because, in the case of a student seeking employment, denying a request from a prospective employer for an academic transcript would prevent the borrower from acquiring a job, perhaps preventing the borrower from repaying the loan.

Discussion: A change has been made. The Secretary concurs with the objections raised and has deleted this measure from the final regulation.

Comments: Several commenters expressed concern over the suggestion in Appendix D that schools revise admission policies, as these policies, in the case of community colleges, are sometimes mandated by the State.

Discussion: A change has been made. The final regulation specifies that the school should revise its admissions policies in a manner that is consistent with applicable State law.

Comments: Many commenters requested clarifications about the applicability of the Fair Debt Collection Practices Act (FDCPA) to a school that followed the recommendation that it contact a borrower during his or her grace period or after the school received a copy of the lender's preclaims assistance request to urge the borrower to repay the loan.

Discussion: No change has been made. This provision specifies that the school's actions must be consistent with the FDCPA. The authority to interpret the FDCPA rests with the Federal Trade Commission (FTC), not with the Department of Education. In a letter from FTC's Division of Credit Practices to Louise G. Trubek, Executive Director, Center for Public Representation, dated September 12, 1988, the FTC indicated that pre-default collection efforts are not covered by the FDCPA.

Comments: Some commenters argued that, without notification to the school from the lender or guarantee agency that a borrower has made payments to resolve a delinquency, the school might continue efforts to urge the borrower to make payments after the delinquency is resolved, thereby damaging the collectibility of the loan. Other commenters expressed a more general concern that poorly informed or timed collection efforts by schools would do more harm than good.

Discussion: No change has been made. As noted in the NPRM, this default reduction step should be taken in cooperation with the lender to avoid confusing the borrower or damaging the collectibility of the loan. A school should always note in its communications with the borrower that, if the borrower has made payments to cure a delinquency, the school's notice should be ignored.

Comments: Several commenters supported the proposal that, under Sec. 68.90, a school with a default rate over 20%, to avoid an LST sanction, would have to justify not adopting the practice of delaying the certification of a borrower loan application so that the borrower's proceeds were not delivered to the borrower or credited to the borrower's account until the borrower had attended the institution for 30-45 days during the period for which the loan was made. One commenter suggested applying this as a requirement for high default schools with dropout or cancellation problems. Numerous other commenters objected to this measure, expressing concern that it would negatively affect borrowers who need the proceeds from the loan for living expenses, and would create cash-flow problems at some schools.

Discussion: A change has been made. Section 682.603(c) has been amended to require each school with a default rate over 30% to delay certification of the loan application of each student for his or her first GSL or SLS loan for attendance at the school. The Secretary believes that the potential benefit of this measure justifies requiring all schools with default rates over 30% to take this step.

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Section 668.12 Institutional participation agreement.

Comment: One commenter asked what is meant by the statement that a participation agreement becomes effective on the date executed by the Secretary. Three commenters suggested that when a participation agreement has expired, the effective date of a new participation agreement should be retroactive to the expiration date of the previous agreement, especially when there is a change in ownership. These commenters also expressed the opinion that because an institution undergoing an ownership change may not disburse Title IV, HEA funds after its agreement expires, the lack of a retroactive feature is unfair to students enrolled in that institution.

Response: A change has been made. The procedure under which an institution becomes eligible to participate in the Title IV, HEA programs is a two-step procedure. Under the first step, the Department of Education determines whether the applicant institution satisfies the applicable statutory and regulatory definitions of an eligible postsecondary institution. Under the second step, the Department determines whether the institution is administratively capable and financially responsible under Sec. Sec. 668.13 and 668.14. If the Department determines that the institution qualifies under both steps, it sends the institution a participation agreement signed by the Secretary or the Secretary's designee. The institution had previously signed the agreement as part of the application process. While the date that the Secretary signs the agreement is the effective date of the agreement, as a practical matter that date only controls the disbursement of funds to students attending that institution. Thus, an institution may begin to disburse title IV, HEA program funds to its eligible students only on or after that date. However, the students may receive financial aid for the entire payment period in which the Secretary signed the participation agreement, even if the payment period began before the date of the Secretary's signature.

The circumstances surrounding the eligibility of an institution that changes ownership resulting in a change of control require special treatment. The Secretary has revised Sec. 668.12 to clarify how the effective date of a new participation agreement applies to an institution in that situation.

The participation agreement signed by an institution's previous owner expires on the date that the change of ownership resulting in a change in control takes place. To continue to participate in the Title IV, HEA programs, that institution must take steps to reaffirm its eligibility and its certification in order to be considered the same institution after the change. If the institution under its new ownership satisfies the Secretary regarding its eligibility to participate in the Title IV, HEA programs, the Secretary enters into a new participation agreement with the new owners of the institution.

When a new participation agreement is signed by the Secretary, the new owner may begin disbursing Title IV, HEA program funds. Since the Secretary considers that institution to be the same institution, the new owner ordinarily may disburse funds to students who were enrolled beginning with the payment period in which the change of ownership took place, even if that payment period ended before the Secretary signed the new agreement.

There is one exception to this disbursement procedure under the Pell Grant and campus-based programs, however. If the change of ownership that results in a change in control occurs in one award year and the Secretary signs the new participation agreement in another award year, the new owner may not make Pell Grant and campus-based disbursements for any payment period that does not occur at least partially in the award year in which the Secretary signs the agreement.

If a new institution is created by separating a part of an existing participating institution, but the new institution remains under the same ownership as the existing participating institution, students at the new institution may continue to receive financial aid under the participation agreement with the existing participating institution until the new institution enters into its own participation agreement with the Secretary. If, however, the new institution changes its ownership resulting in a change in control when it separates from the existing participating institution, the existing participation agreement ceases to apply to the new institution on the date that the ownership change takes place. The conditions that apply to other institutions undergoing ownership changes also apply to this new institution. This retroactive payment feature does not apply to an institution under new ownership if the institution's participation under its previous owner was terminated by the Secretary under the provisions of Subpart G of these regulations, since an institution so terminated may not reapply to participate in the Title IV, HEA programs for 18 months. The new owner of such an institution may only disburse funds for payment periods beginning with the payment period in which the new participation agreement is signed by the Secretary.

Section 668.14 Standards of administrative capability.

Comment: Many commenters felt that the proposal in the NPRM that institutions refer any instance of suspected fraud by a Title IV, HEA applicant to State or local law enforcement agencies for investigation was unclear. Several commenters were unsure what constituted application for aid under "false pretenses."

Response: A change has been made. Based on the concerns of the postsecondary educational community, including numerous comments received regarding a cross-reference to this requirement contained in the NPRM for Subpart E of the Student Assistance General Provisions published in the FEDERAL REGISTER on July 26, 1985, 50 FR 30674, the Secretary has clarified this requirement. Section 668.14(f) requires, and has required since 1979, that an institution develop and apply an adequate system to identify and resolve discrepancies in information it receives from different sources with respect to a student's application for financial aid under the Title IV, HEA programs. If, as a result of the review called for under Sec. 668.14(f), the institution discovers any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application, it must refer that information either to the Office of Inspector General of the Department of Education or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the information. In this regard, an institution should refer all cases where it finds information that indicates that the student included information on his or her application that the student knew to be false for the purpose of obtaining more Title IV, HEA assistance than he or she would otherwise be entitled to receive. The Secretary has also included in these regulations several examples of possible areas in which an applicant may engage in fraud or other criminal misconduct: False claims of independent student status or citizenship, the use of false identities, the forgery of signatures or certifications, and false statements of income.

Comment: Several commenters stated that it would be impossible to define the circumstances under which the institution has clear evidence that an applicant's intent in reporting false information was fraudulent. For this reason, these commenters recommended that the requirement that institutions report instances of suspected fraud to law enforcement agencies be deleted.

Response: No change has been made. The Secretary recognizes that applicants often misreport information without having any intent to deceive. However, there are identifiable circumstances in which the institution would have reason to believe that an applicant has deliberately misreported information to increase his or her eligibility for Title IV, HEA assistance. For instance, when an applicant uses a false identity to apply for assistance or alters official documents such as transcripts or the Student Aid Report, the institution would have reason to believe that these actions were intentional. The institution is not required to reach a firm conclusion as to the propriety of the applicant's actions but is required to refer the matter to the appropriate law enforcement agency or the Inspector General for investigation.

Comment: Many commenters noted that the NPRM did not specify the types of law enforcement agencies to which a referral should be made and questions whether State or local agencies were even aware of their possible involvement in and responsibility for those investigations. Several commenters suggested that the investigation of fraudulent applications for Federal student aid should properly be the concern of Federal enforcement agencies.

Response: A change has been made. Because of the different structure and responsibilities of law enforcement agencies within each State, it is not possible to specify any one type of organization to which referrals must be made in all States. Many institutions have an independent campus police force that is authorized to conduct investigations concerning the misuse of Federal funds. At the local level, the county police department or sheriff's office generally has jurisdiction in the case of misuse of Federal funds. In keeping with its responsibility to establish and coordinate relations with State and local law enforcement agencies, the Office of Inspector General for the Department of Education has conducted numerous training programs for State and local law enforcement officers on the Federal student financial assistance programs. However, in light of the differences among law enforcement agencies at the State and local level, the Secretary recognizes that there may be some cases in which no State or local agency has jurisdiction. The Secretary also recognizes that some State or local agencies might experience an additional burden by the unexpected referral of a large number of instances of possible fraud or other criminal misconduct. Therefore, the Secretary has revised the section to permit an institution to make a referral either to the Office of Inspector General of the Department of Education or, if more appropriate, to State or local authorities.

Comment: Several commenters were concerned that an additional administrative burden would be placed upon institutions by the requirement that institutions must refer instances of fraudulent applications for Title IV, HEA aid. The commenters cited increased paperwork and litigation cost to the institutions.

Response: No change has been made. The Secretary believes that the administrative burden associated with this requirement will be minimal. Institutions are required to identify and resolve instances in which there are discrepancies in information received from various sources. Institutions are not required to investigate or litigate cases of suspected fraud. Institutions are merely required to refer instances when their actions under Sec. 668.14(f) reveal possible fraud or criminal misconduct. There should be relatively few of these instances at any single institution.

Comment: Several commenters were concerned that referring student information to law enforcement agencies would deny the applicant due process. Three commenters believed that under this provision students would receive unequal treatment based on the personal views of the financial aid administrator. Two commenters believed that referral of student information conflicted with the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, 34 CFR Part 99.

Response: No change has been made. A school's referral of instances of suspected fraud to law enforcement agencies or the Office of Inspector General does not deny the student due process. Section 99.31 of the Department of Education's FERPA regulations specifically authorizes the release of student information as necessary "to enforce the terms and conditions of student aid." In addition, an institution is authorized to release information to the Secretary for audit, evaluation, and enforcement of Federal legal requirements that apply to federally supported programs (see 34 CFR 99.31(a)(3) and (4); 99.35).

Comment: Many commenters were concerned with the requirement in Sec. 668.14(c) that an institution must use an adequate number of qualified persons to administer the Title IV, HEA programs. Many commenters asked if the Secretary used a formula to determine what is an adequate number of qualified persons. One commenter stated that due to the diversity of institutions it would be impossible for the Secretary to make a determination.

Response: No change has been made. The Secretary does not use a formula in making this determination. What may be an adequate number of qualified persons to administer the Title IV, HEA programs at one institution may be insufficient at another. For instance, the number of individuals required at an institution to ensure proper and prudent administration of the student assistance programs will vary depending upon such factors as the amount of aid disbursed, the number of recipients, and the use of automated data processing equipment or a centralized award and disbursement system.

Comment: Several commenters argued that an institution should only have to evaluate academic periods during which a student received Title IV, HEA aid when determining if the student is making satisfactory progress in his or her course of study for purposes of Sec. 668.14(e).

Response: No change has been made. The purpose of the satisfactory progress rule is to ensure that limited Title IV, HEA program funds are given to students who are likely to complete their educational programs in a timely manner. Whether a student received aid during an academic period is irrelevant to that determination.

Section 668.15 Additional factors for evaluating administrative capability.

Comment: Several commenters disagreed with the proposed elimination of GSL and PLUS program default rates as indicators of an institution's administrative capability. They were of the opinion that postsecondary institutions may be indirectly responsible for default rates and should be required to assist lenders and State agencies in collection efforts. Other commenters were pleased with the proposal because they felt that GSL and PLUS program default rates are not related to an institution's administrative capability.

Response: A change has been made. The Secretary recognizes that an institution does not have the responsibility (unless it is also the lender) for collecting GSL, PLUS, and SLS program loans received for attendance at an institution and thus lacks direct responsibility for and control over that aspect of loan administration. However, under the changes made to the HEA by the Higher Education Amendments of 1986, an institution, even if it is not a lender, is required to provide to each borrower exit counseling concerning indebtedness and debt management strategies. Further, a high default rate on loans made under the GSL, PLUS, and SLS programs may indicate other problems at an institution. Therefore, the Secretary has included default rates on loans made under those programs as indicators of an institution's impaired administrative capability.

Comment: A few commenters questioned the relationship between an institution's student withdrawal rate and its capability to administer Title IV, HEA programs. The same commenters questioned the rationale for using 33 percent as a benchmark figure to indicate possible impaired capability of administering Title IV, HEA program funds by an institution if this percentage of students withdrew during an eight-month period. One commenter asked what the submission of a balance sheet, financial audit, or profit and loss statement might have to do with student withdrawal rates and rates of default.

Response: A change has been made. Simply because an institution fits into one of the categories in this section does not automatically mean that adverse action will be taken against the institution. However, the Secretary believes that a high withdrawal rate at the institution or a high default rate for loans made under the GSL, PLUS, SLS, or Perkins Loan programs may be symptomatic of other administrative and financial problems at the institution that would be reflected in the institution's balance sheet, profit and loss statement, or financial audit. In addition, those rates may justify requiring the institution to take reasonable and appropriate measures to reduce those rates. The documents requested by the Secretary will enable the Secretary to determine the best available measures to take to reduce those rates.

The Secretary will allow an institution every opportunity to describe and justify the reasons for its high withdrawal rate or high default rate. The Secretary chose a benchmark withdrawal rate of 33 percent after extensive public comment on the Student Assistance General Provisions regulations published in the FEDERAL REGISTER on September 28, 1979 (see 44 FR 56278). The Secretary believes that a withdrawal rate of 33 percent or greater is an indication of possible administrative or financial problems at the institution that may cast doubt on the institution's administrative capability.

Section 668.16 Federal interest in Title IV, HEA program funds.

Comment: One commenter was concerned that the language in this section, which states that an institution may not use or hypothecate Title IV, HEA program funds for any purpose other than for the intended student beneficiaries, excludes the investment of cash from the Perkins Loan fund which would increase the fund account.

Response: A change has been made. The prohibition against using or hypothecating Title IV, HEA program funds does not preclude the institution from investing cash from its Perkins Loan fund. Institutions are reminded that all earnings on such investments must be deposited into their Perkins Loan Program revolving funds (see sections 463(a)(2)(E) and 487(a)(1) of the HEA). However, the Secretary has revised this section to indicate that the institution acts in the capacity of a fiduciary of Federal funds to protect the interest of the Secretary as well as the intended student beneficiaries in those funds.

Section 668.17 Change in ownership resulting in a change in control.

Comment: Two commenters asked what constitutes a "controlling interest" in an institution. One commenter noted the elimination of the reference to the transfer of the liabilities of an institution to its parent corporation and asked whether such a transfer no longer constitutes a change in ownership. One commenter thought that a definition of "change of ownership" should be included in this section.

Response: No change has been made. In most cases, a controlling interest in an institution means an interest greater than 50 percent of ownership. The Secretary no longer considers the transfer of liabilities of an institution to its parent corporation to be a change in ownership that results in a change in control, hence the deletion from the regulations. The Secretary does not believe that a definition of the term "change of ownership" is needed in the regulations. Further, this section will be deleted from this part when the institutional eligibility regulations, 34 CFR Part 600, are published as final regulations.

Section 668.19 Financial aid transcript.

Comment: Over one hundred commenters were opposed to the change in the regulations that would prohibit institutions from certifying the institutional portion of a borrower's application under the GSL or PLUS programs until the institution receives the requested financial aid transcript. Many of these commenters stated that this proposal expands the time during which a borrower waits for his or her aid. They said that the additional delay would impose a burden on financial aid officers and a particular hardship on students enrolled in community colleges and proprietary institutions, where transfers are frequent and enrollment periods shorter than at traditional four-year institutions. Several commenters claimed that that delay might be as long as 4 to 6 weeks.

Several commenters suggested alternatives to this proposal. One alternative included allowing an institution to certify one GSL or PLUS application and deliver the first disbursement to the borrower, but not permitting an institution to deliver subsequent disbursements to the borrower without the financial aid transcript. Another alternative included (1) requiring all GSL and PLUS checks either to be sent to the educational institution for distribution or to be made jointly payable to the borrower and the institution and (2) making the release of the checks contingent on receipt of the financial aid transcript. Another commenter suggested that an institution should return the check to the lender if a financial aid transcript has not been received in a timely manner. Several commenters supported the proposed changes in principle.

Response: A change has been made. The Secretary agrees that withholding certification of a GSL, PLUS, or SLS application may delay the processing of the application. Therefore, the Secretary has revised Sec. 668.19 to permit an institution to certify a GSL or SLS application (but not a PLUS application) prior to receiving the financial aid transcript from the institution the borrower previously attended. However, the institution may not release the GSL or SLS proceeds until it receives the financial aid transcript. Under the requirements of the HEA as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, these proceeds are delivered directly to the institution, but PLUS proceeds go directly to the borrower. Therefore, since the institution has no control over the release of PLUS proceeds, the Secretary is retaining the requirement that the institution may not certify a PLUS application until it receives the financial aid transcript.

Comment: Several commenters felt that it would be impossible for institutions to provide accurate information on the financial aid transcript as to the amount of and period covered by each GSL or PLUS program loan received by a borrower. The commenters suggested rewording this section to read "approved" instead of "received" since financial aid officers only know the amount authorized and amount approved by the lender but not the actual amount received by the student.

Response: No change has been made. These comments were received before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, which require that except in the case of loans made to parent borrowers under the PLUS Program, proceeds must be sent to the institution. Therefore, in most cases an institution will be able to report the exact amount that a borrower received for any period after the implementation of the statutory change. The Secretary is aware that for periods before implementation of the statutory change, an institution may not know the exact amount received by a borrower unless the institution is the lender. If the institution did not receive the proceeds, the amount that the institution must report on the financial aid transcript is the loan amount that the institution certified.

Comment: Several commenters were of the opinion that requiring a financial aid transcript to be signed by an official authorized by the institution to disclose information in connection with Title IV, HEA programs is too restrictive. One commenter asked whether this requirement excluded the use of automated methods.

Response: No change has been made. The Secretary does not intend to limit the use of automated methods for preparing financial aid transcripts. However, if a computer-generated transcript is used, it must have the signature of someone who is knowledgeable about the information reported and authorized to disclose that information. It is important that the information provided be accurate and that the person attesting to the accuracy of the information be a reliable and responsible officer of the institution.

Comment: Several commenters asked whether the reference to "State" in Sec. 668.19(a)(2)(iii) of the proposed regulations refers to a State of the Union, a State in which the institution is located, or a foreign country for foreign institutions. One commenter asked whether this term includes Washington, DC.

Response: No change has been made. The definition of the term "State" appears in Sec. 668.2 (General definitions). The exclusion, therefore, refers to eligible institutions located in foreign countries.

Comment: A number of commenters stated that the wording in Sec. 668.19(a)(2) of the proposed regulations suggests that an institution may make one payment regardless of whether a transcript has been requested.

Response: A change has been made. The Secretary agrees that clarification is needed. An institution or student must request a financial aid transcript before the one payment is disbursed in accordance with the regulations.

Section 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

Comment: Many commenters requested an exception to the one-year restriction on noncredit remedial work in determining enrollment status for students receiving a Pell Grant. They claimed that it would be difficult for an institution to monitor when a student had completed an academic year of remedial work. A few commenters contended that this restriction would disproportionately affect low-income and nontraditional students who are the very students the Pell Grant Program is designed to help. Many of these commenters felt that any limits on remedial work should be determined by the institution. Other commenters suggested that an institution's satisfactory progress standards should form the basis for any limitation on remedial work. Some commenters thought that the Secretary does not have the statutory authority to limit Pell Grant payments for remedial work.

Response: No change has been made. The purpose of Title IV, HEA programs is to assist students who are enrolled in postsecondary education. The Secretary is not excluding remedial courses from eligibility but rather is setting a limit on the duration of remedial coursework that can reasonably be viewed as a part of a postsecondary program of study. The Secretary does not consider a student who enrolls in the equivalent of more than one year of remedial work to be enrolled in postsecondary education.

Comment: A few commenters asked if the equivalent of a year of remedial work has to be completed within one academic year or if it could be taken over several academic years within the program of study.

Response: No change has been made. The hours that equal one academic year do not have to be taken within a single academic year. Based on individual needs, a student could spread the academic year of work (30 semester hours, 45 quarter hours, or 900 clock hours) throughout his or her program of study, if permitted by the institution.

Comment: One commenter disagreed with the exception to the one-year limit for students enrolled in courses in English as a second language.

Response: No change has been made. Although students enrolled in courses in English as a second language are exempt from the one-year limitation, these students are still subject to the one-year limitation for any other courses that are remedial in nature. The Secretary believes that these students usually have the knowledge and skills of high school graduates but need to learn a second language as part of their postsecondary program.

Section 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

Comment: Many commenters felt that, for the most part, Sec. 668.22 of the proposed regulations clarified the difference between refunds and repayments. However, many commenters were confused on how the concept of a "payment period" would be applied to GSL and PLUS program loans. Several commenters, writing before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, expressed concern over the fact that a typical GSL or PLUS program loan was disbursed in a single payment that covered expenses for the entire period of enrollment.

Response: No change has been made. The calculation of the refund distribution formula in Sec. 668.22 is based on the concept of "payment period" as that term is used in most of the Title IV, HEA programs. In the context of the GSL, PLUS, and SLS programs, however, that concept is different, and it generally refers to the period of enrollment for which a loan is made. For consistency in the application of the formula, therefore, an institution is to consider that enrollment period to be divided into portions that correspond to the payment periods used for the other Title IV, HEA programs.

For purposes of the refund distribution fraction, the amount of the GSL, PLUS, or SLS proceeds considered to be awarded for a payment period is determined by dividing the whole loan amount by the number of institutionally defined payment periods in the period of enrollment for which the loan is made. For example, if the enrollment period for which the GSL, PLUS, or SLS program loan is made equals three academic quarters and the student was awarded a GSL of $1,500, one-third of the total loan, i.e., $500, is considered to have been awarded for each payment period.

It should be noted that the changes in the HEA made by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, and the Higher Education Technical Amendments Act of 1987, which were enacted after these comments were received, require multiple disbursements for GSL, PLUS, or SLS proceeds for periods of instruction greater than six months if the loan amount is $1,000 or more. However, for a student who is awarded a multiple disbursement loan, the amount of the loan proceeds actually disbursed is not necessarily the same as the amount that is considered to have been disbursed in each payment period. For example, an institution uses an academic calendar divided into quarters and the enrollment period for which a loan is made consists of three quarters. A student receives a $1,500 GSL in two disbursements of $750 each. However, for purposes of the refund formula, the student is considered to have received a disbursement of $500 in each of the three quarters (payment periods).

Comment: Several commenters suggested that simplicity and consistency in the refund concept for all Title IV, HEA programs, could be enhanced by changing the word "awarded," which is used in the numerator and denominator of the formula, to "disbursed."

Response: No change has been made. During the development of the refund formula that first appeared in the Student Assistance General Provisions regulations in 1979, the Secretary determined that it would be easier for an institution to use the term "amount awarded" in the refund and repayment formula. The institution may not know the amount the student has actually received, particularly in the case of a PLUS Program loan or other assistance provided by organizations outside the institution.

Comment: Many commenters agreed that in refund cases, Title IV, HEA program funds should be returned to respective accounts in a timely manner, but stated that 30 days was an insufficient amount of time for doing so.

Response: A change has been made. In an effort to reduce potential abuse of Title IV, HEA program funds and allow for prompt rewarding of returned SEOG and Perkins Loan funds, the Secretary is keeping the 30-day repayment rule. However, the Secretary has revised the regulations so that the 30-day repayment period for unofficial withdrawals will not commence until an institution determines that a student has withdrawn. An institution must have a method for promptly determining when a student has unofficially withdrawn, because the institution is responsible for maintaining a system to ensure the timely return of Title IV, HEA program funds.

Comment: Four commenters stated that Sec. 668.22(a)(3) of the proposed regulations is ambiguous in referring to "institutions which do not receive funds under the Alternate Disbursement System (ADS)" rather than simply stating that the procedure applies to institutions using the Regular Disbursement System.

Response: A change has been made. The Alternate Disbursement System ceased operation after the 1986-87 award year. Therefore, references to both the Alternate Disbursement System and the Regular Disbursement System have been removed from the regulations.

Section 668.24-Audit exceptions and repayments.

Comment: Several commenters questioned the reasoning behind the proposed change from 60 to 30 days on the time allowed for audit exception repayments.

Response: A change has been made. In the proposed regulations, the time in which an institution must repay improperly spent funds would have changed from 60 days to 30 days to conform to the instructions in the revised Office of Management and Budget (OMB) Circular A-50 issued on September 29, 1982. In these final regulations, the Secretary has changed that number of days from 30 to 45. This change corresponds to the change in the HEA made by the Higher Education Amendments of 1986, which allows an institution to request a hearing on the record regarding an audit exception within 45 days.

Section 668.25-Loss of institutional eligibility.

Comment: Several commenters wanted a definition of "commitment" for the GSL and PLUS programs, such as the one in Sec. 668.94(c)(2) of Subpart G (originally published as Sec. 668.84(c)(2) of the proposed regulations). These commenters recommended that language be included in this section to prohibit an institution from certifying a student's eligibility on a GSL or PLUS application during the loss of institutional eligibility.

Response: A change has been made. The Secretary agrees with the commenters that a definition of "commitment" under the GSL, PLUS, and SLS programs is needed in this section for clarity. Language similar to that in Sec. 668.94(c)(2) of Subpart G has therefore been added to Sec. 668.25(b). The revised Sec. 668.25(b) provides that a commitment under the GSL, PLUS, or SLS programs takes place when the Secretary or the guarantee agency advises the lender that a loan is guaranteed. Section 682.603 of the regulations implementing the GSL Program permits an institution to distribute proceeds to a student, pursuant to 34 CFR 682.604, if the GSL, PLUS, or SLS application was certified by the institution prior to the institution's loss of eligibility. The regulations implementing the GSL Program prohibit an institution from certifying an application after the loss of eligibility.

PART 653-PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Subpart A-General

Sec.

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653.3 What regulations apply to this program?

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Subpart B-What Assistance Does the Secretary Provide Under This Program?

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Authority: 20 U.S.C. 1111-1111h, unless otherwise noted.

Subpart A-General

Sec. 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary school level.

(Authority: 20 U.S.C. 1111)

Sec. 653.2 Who is eligible to participate in this program?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who wish to pursue teaching careers at the preschool, elementary, or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1111b et seq.)

Sec. 653.3 What regulations apply to this program?

The following regulations apply to the Paul Douglas Teacher Scholarship Program:

(a) The regulations in this Part 653.

(b) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1111-1111h et seq.)

Sec. 653.4 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) Definitions in EDGAR. The following termsused in this part are defined in 34 CFR Part 77:

Application

EDGAR

Elementary school

Nonprofit

Preschool

Private

Public

Secondary school

Secretary

State

State educational agency

(b) Other definitions that apply to this part. The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

"Act" means the Higher Education Act of 1965, as amended.

"Award year" means the period of time from July 1 of one year through June 30 of the following year.

"Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

"Institution of higher education" has the same meanng under this part as the same term defined in 34 CFR 668.3 of the Student Assistance General Provisions regulations.

"Scholar" means a scholarship recipient.

"Scholarship" means an award made to an individual under this part for one academic year.

(Authority: 20 U.S.C. 1111-1111h)

Subpart B-What Assistance Does the Secretary Provide Under This Program?

Sec. 653.10 For what purposes may a State use its payments under this program?

A State may use its payments under the Paul Douglas Teacher Scholarship Program, including principal and interest payments it receives from scholars under Sec. 653.42, only for making payments to scholars.

(Authority: 20 U.S.C. 1111)

Subpart C-How Does a State Apply for Grants?

Sec. 653.20 What must a State do to receive grants under this program?

(a) To receive grants under the Paul Douglas Teacher Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that-

(1) Designates as the State agency for the administration of the Paul Douglas Teacher Scholarship Program, either-

(i) The State agency which administers the State Student Incentive Grants Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Program and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by Sec. Sec. 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in Sec. 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include-

(i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Paul Douglas Teacher Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selection of scholars were developed and in what ways they reflect the State's present and projected needs for preschool, elementary, and secondary teachers in general and for those with training in specific academic disciplines;

(5) Provides assurances that-

(i) No changes will be made in the designations of an agency to administer the Paul Douglas Teacher Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Paul Douglas Teacher Scholarship without entering into an agreement with the designated State agency under which he or she agrees to the terms specified in Sec. 653.40;

(iii) The terms and conditions of the agreement which the State agency will enter into with scholars under Sec. 653.40 will be fully disclosed in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of Sec. 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(ii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding under this program.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840-0578)

Sec. 653.21 What requirements must be met by States in the administration of the program?

(a) To continue to receive payments under this part, a State shall-

(1) Provide scholarship assistance only to students who meet the requirements of Sec. 653.30, 653.40, and 653.41;

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of Sec. 653.42 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(5) Except as otherwise provided in paragraph (d) of this section-

(i) Expend all funds received from the Secretary for scholarships during the award year specified by the Secretary with regard to those funds; and

(ii) Expend in that award year, for scholarships, all funds received by the State prior to that award year from principal and interest payments made under the provisions of Sec. 653.42.

(b) A State shall award a scholarship in the amount of $5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the Perkins Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amount in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(5) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1111c, 1111d, 1111e)

Subpart D-How Does a State Select Scholars Under This Program?

Sec. 653.30 What are the eligibility requirements?

To be selected as a scholar, an individual shall-

(a)(1) Be a United States citizen or National;

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she-

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citzen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b)(1) Have graduated from high school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten percent of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten percent of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(Authority: 20 U.S.C. 1111d)

Sec. 653.31 Who selects the scholars?

(a) Scholars must be selected by-

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary; or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(Authority: 20 U.S.C. 1111d)

Sec. 653.32 What are the selection criteria and procedures?

(a) The panel or agency appointed or designated by the chief State elected official in accordance with Sec. 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for preschool, elementary, and secondary teachers as required by section 553(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 553(d) of the Act.

(c) The State shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select scholars without regard to whether applicants plan to attend publicly or privately controlled institutions.

(Authority: 20 U.S.C. 1111b, 1111d)

Subpart E-What Are the Scholarship Conditions?

Sec. 653.40 What agreement must a scholar have with the State agency?

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section-

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received-

(i) In a public or private nonprofit preschool, elementary school, or secondary school in any State; or

(ii) In a public or private nonprofit preschool, elementary, or secondary education program in any State;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of compliance with paragraphs (a) (1) and (2) of this section and Sec. 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in Sec. 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the State agency determines that the individual is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level.

(b) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by section 428(b)(4) of the Act.

(c) The agreement referred to in paragraph (a) of this section must include-

(1) A description of the procedures under which the provisions of Sec. 653.42 (g) through (k) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840-0578)

Sec. 653.41 What are the requirements for a scholar to continue to receive payments under this program?

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be-

(1) Enrolled as a full-time student in an institution of higher education that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with section 1201(a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the State agency but not including graduate study that is not required for initial teacher certification; and

(3) Maintaining satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(Authority: 20 U.S.C. 1111e)

Sec. 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

(a) A scholar found by a State to be in noncompliance with the agreement entered into under Sec. 653.40, or to be no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, shall-

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not completed, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency.

(b) The interest charge referred to in paragraph (a)(2) of this section accrues from-

(1) The date of the initial scholarship payment if the State agency has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year, and is set at a rate that is the greater of the following rates established pursuant to section 427A of the Act for the same twelve-month period:

(i) The rate charged to new borrowers under the Guaranteed Student Loan Program (Title IV, Part B of the Act)

(ii) The rate charged to new borrowers under the Supplemental Loans for Students and PLUS Programs (sections 428A and 428B of the Act, respectively) as published annually in the Federal Register.

(2) For a scholar required to repay his or her scholarship-

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (b) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (d) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (c)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (c)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall-

(1) Enter repayment status on the first day of this first calendar month after-

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which-

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (i) of this section; and

(ii) Amount annually to no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the State's satisfaction.

(e) The State agency shall not require scholarship repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is-

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the State under paragraph (d)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school, or in a public or private nonprofit preschool, elementary, or secondary education program for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar shall notify the State agency of his or her claim to the exception and provide supporting documentation as required by the State agency.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments referred to in paragraph (d) of this section and interest does not accrue.

(j) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or here financial condition has been established to the State's satisfaction.

(k) The State agency shall cancel a scholar's repayment obligation if it determines-

(i) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence, conclusive under State law, that the scholar has died.

(Authority: 20 U.S.C. 1111f, 1111g)

[FR Doc. 87-27042 Filed 11-24-87; 8:45 am]

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?

654.2 Who is eligible to apply for an award?

654.3 What kinds of activities does the Robert C. Byrd Honors Scholarship Program assist?

654.4 What regulations apply?

654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to receive a grant under this program?

Subpart C—How Does the Secretary Make a Grant to an SEA?

654.20 How Does the Secretary allot funds to an SEA?

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

654.30 How does an individual apply for a scholarship?

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

654.40 What are the selection criteria and procedures?

654.41 What are the requirements for a student to receive assistance under this program?

Subpart F—What Postaward Conditions Must an SEA Meet?

654.50 What requirements must an SEA meet in the administration of this program?

Appendix--Comments

Authority: 20 U.S.C. 1070d - 31 to 1070d - 41, unless otherwise noted.

Subpart A—General

654.1 What is the Robert C. Byrd Honors Scholarship Program?

(a) Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes available, through grants to the States, scholarships to exceptionally able students for study at institutions of higher education in order to recognize and promote student excellence and achievement.

(b) This program is known as the "Byrd Scholarship Program" and scholarship recipients are known as "Byrd Scholars."

(Authority: 20 U.S.C. 1070d-31, 1070d-33)

654.2 Who is eligible to apply for an award?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who have been accepted or have applied for enrollment at institutions of higher education are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1070d-33)

654.3 What kinds of activities does the Robert C. Byrd Scholarship Program assist?

(a) An SEA may use its allotment under section 654.20(a) only for making payments to scholars.

(b) An SEA may use its allotment under section 654.20(b) for covering costs incurred in administering the program, as determined in accordance with 34 CFR Part 80, or for making payments to scholars.

(Authority: 20 U.S.C. 1070d-35, 1070d-38)

654.4 What regulations apply?

The following regulations apply to the Robert C. Byrd Honors Scholarship Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 654.

(Authority: 20 U.S.C. 1070d-31 et seq.)

654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

(a) Definitions in the Act. The following terms used in this part are defined in section 419B of the Act:

Secondary school

State

(b) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

EDGAR

Secretary

State educational agency (SEA)

(c) Other definitions. The following definitions also apply to this part:

With respect to the postsecondary academic year, "academic year" means—

(1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

"Act" means the Higher Education Act of 1965, as amended.

"Award period" means the period of time from April 1 of one year through March 31 of the following year.

"Institution of higher education" means any public or private nonprofit institution of higher education as defined in 34 CFR 600.4 of the Institutional Eligibility regulations.

"Recognized equivalent of a high school diploma" means—

(1) A General Education Development (GED) Certificate; or

(2) A State certificate received by a student after the student has passed a State authorized examination that the State recognizes as the equivalent of a high school diploma.

"Scholar" means a Byrd Scholarship recipient.

"Scholarship" means an award made to an individual under this part.

(Authority: 20 U.S.C. 1070d-31 to 1070d-41)

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to receive a grant under this program?

(a) To receive a grant under the Byrd Scholarship Program, a State shall submit a participation agreement to the Secretary for review and approval.

(b) The Secretary approves a participation agreement if the agreement—

(1) Provides that the State, through its SEA, agrees to administer the Byrd Scholarship Program in accordance with the requirements in this part;

(2) Describes the criteria and procedures that the SEA uses in the selection of scholars in sufficient detail for the Secretary to determine the degree to which they satisfy the provisions of this part; and

(3) Provides assurances that—

(i) The SEA will make no changes in the criteria and procedures to be used in the selection of scholars without the prior written approval of the Secretary;

(ii) Each student receiving a Byrd Scholarship will meet the eligibility requirements described in section 654.41;

(iii) The SEA will select scholars solely on the basis of criteria and procedures established in accordance with the provisions of section 654.40;

(iv) The SEA will conduct outreach activities to publicize the availability of Byrd Scholarships to all seniors attending secondary schools in the State, with particular emphasis on activities designed to ensure that students from low-income and moderate-income families know about their opportunity for full participation in the program;

(v) The SEA will issue an award for $1,500 to each Byrd Scholar during an awards ceremony to be held before the latest date on which any secondary school in the State completes its secondary academic year; and

(vi) The SEA will expend the amount of Federal funds allotted to it for this program only as described in section 654.3.

(c) Upon the Secretary's approval of its agreement, an SEA need not submit additional agreements in order to be considered for funding under this program in subsequent years.

(Approved by the Office of Management and Budget under control number 1840-0612)

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-39)

Subpart C—How Does the Secretary Make a Grant to an SEA?

654.20 How does the Secretary allot funds to an SEA?

From the funds appropriated for the Byrd Scholarship Program, the Secretary allots to each SEA having an approved participation agreement under 654.10—

(a) $1,500 multiplied by the number of scholars the SEA may select under 654.40(b)(1); and

(b) $10,000 plus 5 percent of the amount for which the SEA is eligible under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070d-34)

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

654.30 How does an individual apply for a scholarship?

To apply for a scholarship, an individual shall follow the application procedures established by the SEA in the State in which the individual resides.

(Authority: 20 U.S.C. 1070d-33, 1070d-35)

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

654.40 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall design the selection criteria and procedures to ensure that it—

(1) Selects ten scholars from among the residents of each Congressional district of the State for each award period for which funds are received, with the exception of the District of Columbia and the Commonwealth of Puerto Rico, which shall each establish procedures for the selection of 10 scholars from among its respective resident students for each year for which funds are received;

(2) Selects scholars solely on the basis of demonstrated outstanding academic achievement, promise of continued achievement; and the geographic consideration described in paragraph (b)(1) of this section, and—

(3) Selects scholars—

(i) Without regard to whether the secondary schools they attend are within or outside the scholars' Congressional districts or States of residency;

(ii) Without regard to whether the institutions of higher education they plan to attend are public or private or are within or outside the scholars' Congressional districts or States of residency;

(iii) Without regard to sex, race, handicapping condition, creed, or economic background; and

(iv) Without regard to their educational expenses or financial need.

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-37)

654.41 What are the requirements for a student to receive assistance under this program?

(a) To receive scholarship assistance, a student must—

(1) During the same secondary academic year in which the scholarship is to be awarded—

(i) Graduate from a secondary school, or receive a recognized equivalent of a high school diploma; and

(ii) Be accepted for enrollment at an institution of higher education;

(2) Be a resident of the State to which he or she is applying for a scholarship;

(3)(i) Be a U.S. citizen or national; or

(ii) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(4) File with the institution he or she plans to attend or is attending, a Statement of Selective Service Registration Status if required by the institution in accordance with the provisions of 34 CFR Part 668 of the Student Assistance General Provisions regulations; and

(5) Pursue a course of study at an institution of higher education, as described in paragraph (b) of this section.

(b)(1) For purposes of paragraph (a)(5) of this section, a scholar is deemed to be pursuing a course of study if he or she is enrolled at an institution of higher education as at least a half-time student, as determined by the institution he or she is attending under standards applicable to all students enrolled in that scholar's course of study.

(2) In accordance with such guidelines and standards as may be established by an SEA, a scholar who has been accepted for enrollment at an institution of higher education may, without forfeiting his or her scholarship, postpone his or her enrollment at the institution of higher education for up to a period of one year beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded him or her the scholarship.

(Authority: 20 U.S.C. 1070d-36 to 1070d-38, 50 U.S.C. App 462)

Subpart F—What Postaward Conditions Must an SEA Meet?

654.50 What requirement must an SEA meet in the administration of this program?

(a) To continue to receive payments under this part, an SEA shall—

(1) Provide scholarship assistance only to students who meet the requirements in 654.41;

(2) Select scholars in accordance with the provisions in 654.40;

(3) Award to each scholar only one scholarship in the amount of $1,500 to be used for the first academic year of study at an institution of higher education;

(4) Make arrangements, to the extent possible, to have scholarship awards presented to the scholars during a ceremony at a convenient location by Members of the Senate and Members of the House of Representatives who represent the State (or by the Delegate in the case of the District of Columbia or the Resident Commissioner in the case of the Commonwealth of Puerto Rico);

(5) Disburse the scholarship proceeds, in the form of a warrant, voucher, or check payable to the student or copayable to the student and an official of the institution of higher education in which the student enrolls, during the awards ceremony or after confirming that the scholar has met the requirements described in 654.41;

(6) Make no adjustments to the student's award because of the student's educational expenses or financial need;

(7) Collect any scholarship funds disbursed to a student who fails to meet the requirements of 654.41;

(8) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part; and

(9) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary with regard to those funds.

(b)(1) After awarding all scholarships during an award period, as required by paragraph (a)(9) of this section, an SEA may reserve for scholarship expenditures in the following award period any funds that have been awarded but are subsequently returned or recovered.

(2) An SEA may reserve for administrative costs or scholarship expenditures in the following award period any funds from its administrative cost allotment that remains unexpended at the end of the award period for which the funds were granted.

(Authority: 20 U.S.C. 1070d-33, 1070d-36, 1070d-38 to 1070d - 40)

Appendix--Comments

June 20, 1989 FEDERAL REGISTER

SUPPLEMENTARY INFORMATION: The Byrd Scholarship Program is a federally funded program authorized under Title IV, Part A, Subpart 6 of the HEA. The purpose of the program is to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued academic achievement. Nonrenewable scholarships of $1,500 are awarded to students on the basis of merit for the first year of study at an institution of higher education.

Byrd Scholarships were awarded for the first time in the spring of 1987, for study in academic year 1987-88. Because the Secretary has not previously issued specific regulations for this program, administration of the program to date has been governed by the General Education Provisions Act, Education Department General Administrative Regulations (EDGAR), applicable provisions of the program statute, and notices of final procedures published in the Federal Register. The publication of notices of final procedures was necessitated in fiscal years 1987 and 1988, and again in the current fiscal year, due to language in the Department's appropriation acts for those years which superseded certain provisions of the Byrd statute. Barring the enactment of superseding appropriations language in future years, the issuance of these regulations is intended to remove the need for annual notices of final procedures, by providing permanent guidance to States in their administration of the program.

On September 30, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Robert C. Byrd Honors Scholarship Program in the Federal Register (53 FR 38660).

Changes Resulting From Public Comment

In addition to a number of editorial and technical revisions which have been made to these final regulations as a result of the comments received on the NPRM and as discussed in detail in the Analysis of Comments and Changes section which follows, the Secretary has also made the following significant changes:

1. The term "calendar year" in sections 654.10(b)(3)(v) and 654.41(a)(1) has been replaced with the term "secondary academic year." The specific time frames which are to be associated with the term "secondary academic year" shall be determined by each SEA. (The term "secondary academic year" is to be distinguished from the term "academic year" which refers to the postsecondary academic year and is defined in section 654.5.)

2. The heading in section 654.2 has been changed to read, "Who is eligible to apply for an award?" This change and a concomitant change to subsection 654.2(b) were made in order to clarify that those students who have applied to an institution of higher education are eligible to apply for a Byrd Scholarship even if they have not yet been accepted for enrollment by an institution of higher education.

3. Section 654.41(b)(2) was added to provide that a Byrd Scholar may, without forfeiting his or her scholarship award, postpone enrollment in an institution of higher education for up to one year after receipt of the scholarship award, in accordance with such program guidelines and standards as each SEA may establish.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain.

Section 654.2 Who is eligible to apply for an award?

Comment: One commenter requested that the Secretary change section 654.2(b) of the NPRM to permit secondary school students who have not yet been accepted for enrollment at institutions of higher education to apply for Byrd Scholarships. The commenter requested this change because he stated that applicants do not receive acceptances from most colleges and universities until April, and it would be very late for students to begin the application process for the Byrd Scholarship in April.

Discussion: Although section 419F(a) of the HEA requires that a student be accepted for enrollment to be awarded a Scholarship, there is no statutory requirement that a student be accepted for enrollment in order to apply for a Byrd Scholarship. If an applicant applies for and subsequently does not accept the Scholarship or subsequently is not accepted for enrollment in an institution of higher education, then the SEA must award the Scholarship to another applicant from a list of alternates. The Secretary agrees that a change is necessary to clarify the purpose of the section, which is to state the requirements that must be met by students who wish to apply for an award under the Robert C. Byrd Honors Scholarship Program.

Changes: The Secretary has changed the title of subsection 654.2 to read, "Who is eligible to apply for an award?". The Secretary has also changed section 654.2(b) to allow a secondary school graduate who has applied but has not yet been accepted for enrollment at an institution of higher education to apply for a Byrd Scholarship. The change does not make the student eligible to receive the scholarship prior to acceptance for enrollment at an institution of higher education. (See the first comment and discussion regarding section 654.41 for a discussion of another commenter's related concern about a student's eligibility to apply for a Scholarship.)

Section 654.10 What must a State do to receive a grant under this program?

Comment: Five commenters requested that the Secretary make the awards ceremony required in sections 654.10(b)(2)(v) and 654.50(a)(4) optional or permit the ceremony to be at the discretion of the SEA. One of the commenters stated that he conducted an elaborate awards ceremony for the 1987 Byrd Scholars and invited the entire Congressional delegation to the event. Only one member of the House of Representatives was able to appear. Several other commenters also stated that a single ceremony was very difficult to schedule with the complex schedules of the Members of Congress and logistically difficult for States to administer. The commenters also mentioned that for the first two years of the program, and now for the third year, language in the ED appropriations legislation has eliminated the statutory requirement for an awards ceremony.

Discussion: Section 654.50(a)(4) instructs SEAs to "make arrangements, to the extent possible, to have awards presented to the scholars during a ceremony at a convenient location * * *" (emphasis added). Thus, this section already affords SEAs discretion in choosing the type and location of their award ceremonies, and the Secretary finds there is no need to change the section. In accordance with section 654.50(a)(4), the Secretary encourages SEAs to invite the appropriate Congressional representatives to participate in any ceremony that is held pursuant to this section. As an alternative to holding a formal awards ceremony, the Secretary encourages SEAs to provide Members of the Senate and House of Representatives with lists of the Byrd Scholars from their districts along with the suggestion that they acknowledge formally the scholars' accomplishments, either in a letter to the scholar or by other means available to the Members.

Changes: None.

Section 654.40 What are the selection criteria and procedures?

Comment: One commenter asked what happens to the funds if fewer than ten applications are received from a Congressional district. He also asked if the excess funds could be awarded to applicants from other Congressional districts.

Discussion: Section 654.40(b)(1) requires each SEA to select ten scholars from among the residents of each Congressional district of the State for each award period. This regulatory requirement implements the statutory requirement that is in section 419G(b) of the program statute and cannot be changed absent an amendment to the statute. If the SEA receives fewer than ten applications from eligible students in a particular Congressional district, the Secretary suggests that it contact the secondary schools in that Congressional district to encourage the submission of additional applications. As a practical matter, however, the Secretary considers it highly unlikely that an SEA would receive fewer than ten eligible applications from each Congressional district.

In any event, for fiscal years 1987, 1988, and 1989 section 419G(b) has been superseded by language in the Department of Education appropriations acts for those fiscal years. Thus, for fiscal year 1989 (as in the past two fiscal years) grantees are not required to comply with 654.40(b)(1) on the application process, but rather with the provisions of the notice of final procedures published in the Federal Register on March 27, 1989 (54 FR 12549).

Changes: None.

Comment: One commenter requested that section 654.40(b)(2) and all other appropriate sections include a prohibition against the awarding of scholarships solely on the basis of college admissions test scores. The commenter considered college admissions tests to be biased on the basis of race, gender, and socioeconomic status, and was of the opinion that for this reason SEAs should not be permitted to use them to award scholarships. The commenter recommended the use of high school grades as a selection criterion, because the commenter believed that they are a better predictor of college performance than college admissions test scores.

Discussion: The program statute does not specify which selection criteria SEAs must use in determining the selection of Byrd Scholars. Rather, section 419G(a) authorizes SEAs to "* * * establish the criteria for the selection of scholars. * * *" Therefore, the Secretary cannot prohibit SEAs from considering college admissions test results as one of their criteria. However, the SEAs are required, under section 654.40(b)(2), to select the scholars on the basis of outstanding academic achievement prior to their graduation from high school as well as on the basis of the promise of continued academic achievement. The Secretary considers it unlikely that an SEA could use a "college admissions test" as the sole criterion in scholar selection without bringing into question the SEA's compliance with the requirements of section 654.40(b)(2). The SEA would have to be able to show that the test had been designed to test prior academic achievement and not just to predict college performance. The Secretary encourages all SEAs that use college admissions test scores as a selection criterion to use other criteria as well, so as to ensure generally that SEAs award scholarships to the most qualified scholars.

Changes: None.

Comment: Two commenters were concerned about section 654.40(b)(2)(ii) which requires the SEA to select scholars without regard to whether the secondary schools they attend are within or outside their Congressional districts or States of residency. One commenter had previously interpreted the statute to require scholars to be graduating or have graduated from a secondary school within the State to which the scholar makes application for a Byrd Scholarship. An additional concern was that this requirement would add confusion to the program by requiring the SEA to have proof of residency from parents when applicants are nominated by out-of-State secondary schools.

Discussion: Section 419G(b) of the program statute requires SEAs to select scholars from "among residents of each congressional district in a State. * * *" Sections 654.40(b)(1) and 654.40(b)(2)(ii) maintain the statutory emphasis on the district or State of a student's residency. Doing otherwise would render students ineligible for Byrd scholarships in their State simply because they attend out-of-State schools, such as Department of Defense overseas schools or out-of-State boarding schools. The Secretary can find nothing in the statute or in the legislative history to support such a result. Under these regulations, a student who is attending a secondary school outside his or her State of residency applies for a Byrd Scholarship through the SEA of his or her State of residency and is counted in the appropriate Congressional district as indicated by his or her residency documentation.

Changes: None.

Section 654.41 What are the requirements for a student to receive assistance under this program?

Comment: One commenter expressed concern with proposed section 654.41(a)(1) which requires a scholar to graduate from a secondary school or to receive a recognized equivalent of a high school diploma in the same calendar year in which the SEA awards the Byrd Scholarship. The commenter was concerned that students who receive a recognized equivalent of a high school diploma before the beginning of the "calendar year" would be denied the opportunity to apply for the scholarship. The commenter recommended that the section be modified to allow applications from students who receive a recognized equivalent of a high school diploma within six months preceding the start of the calendar year in which scholarships are to be awarded.

Discussion: The Secretary agrees that the use of "calendar year" would deny this type of student the opportunity to apply for the scholarship, and that such denial is not in keeping with the intent of the program.

Changes: The Secretary has revised section 654.41(a)(1) to replace the term "calendar year" with the statutory term "secondary academic year," found in section 419I(b) of the program statute. The specific time frame associated with the secondary academic year in each State shall be determined by each State. (Note: the term "secondary academic year" is to be distinguished from the term "academic year," which is the postsecondary academic year as defined in section 654.5.)

Comment: A commenter was concerned that section 654.41(a)(1)(ii) requires a student to graduate from secondary school and enter an institution of higher education during the same calendar year. The commenter requested a modification that would permit a Byrd Scholar some options in enrollment in higher education. In the commenter's opinion, this section would reduce the range of options, such as foreign exchange programs that would postpone college enrollment by one year, that some outstanding students want to pursue. The commenter stated that in the first year of the Byrd Scholarship Program a recipient from his State had to postpone enrollment in an institution of higher education until the second semester due to an operation. He believed that the scholar would have been unable to receive the scholarship if the proposed regulations were in effect at that time.

Discussion: Section 654.41(a)(1)(ii) of the NPRM requires only that a scholar be accepted for enrollment at an institution of higher education during the same secondary academic year (referred to as "calendar year" in the NPRM) as the scholarship is to be awarded. Thus, in response to the commenter's concern, the Secretary does not interpret either the statute or section 654.41(a)(1)(ii) of the NPRM as requiring enrollment during the same year as the scholarship is awarded. Rather, the Secretary considers a delay of enrollment for up to one year, as is suggested by the commenter, to be authorized under the statute although he would consider any delay lasting more than one year to be inconsistent with the purpose of the program.

Changes: The Secretary has renumbered section 654.41(b) so that it is now section 654.41(b)(1) and has added section 654.41(b)(2) to provide that a scholar may postpone enrollment in an institution of higher education for up to one year after receipt of a Byrd Scholarship award. However, the new section 654.41(b)(2) also authorizes an SEA to develop and apply program guidelines and standards to the review of any scholar's request for a postponement of enrollment, in accordance with the program administration authority provided to the SEA by section 419E(1) of the Byrd Scholarship Program statute.

Comment: One commenter requested that an SEA collect the Statement of Registration Status required in section 654.41(a)(4). The commenter believed that this procedure is proper since the SEA makes the award to qualified recipients prior to their actual enrollment in a postsecondary institution.

Discussion: The requirement that recipients of aid under Title IV of the HEA who are required to register with Selective Service file a Statement of Registration Status with the postsecondary institution which they plan to attend (rather than the SEA as suggested by the commenter) is statutory (see 50 U.S.C. App. 462), and the Secretary cannot change the requirement.

Changes: None.

Section 654.50 What requirements must a State meet in the administration of this program?

Comment: One commenter expressed concern that sections 654.50(a)(4) and 654.50(a)(5) in combination with the requirements in section 654.41 would delay the awards ceremony and the disbursement of funds until after the student has begun his or her initial term in postsecondary education. The commenter was further concerned that 654.50(a)(7) would delay the disbursement of funds until the institution of higher education has certified all requirements in section 654.41.

Discussion: There is no requirement that the Statement of Registration Status must be filed prior to the SEA's awarding of the scholarships during an awards ceremony. Under section 654.50(a)(5), the SEA may decide for itself when to disburse the funds. The fact that neither the Statement of Registration Status nor the confirmation of enrollment is obtained before the actual enrollment of a scholar in a postsecondary institution need not delay the award of the scholarship. The Secretary interprets section 419I(b) of the program statute to require each SEA to make each award before the last date on which any secondary school in the State completes its secondary academic year. However, these regulations do not require the SEA to disburse the awards at that time. Under section 654.50(a)(5), each SEA may hold the funds until after the awards ceremony and following confirmation that the student has met the requirements in section 654.41. Although section 654.50(a)(5) permits an SEA to delay the disbursement of funds until after it has confirmed that the scholar has met the requirements of section 654.41, it does not require the SEA to do so. If the SEA chooses to disburse the scholarship funds at the awards ceremony, as it is also authorized to do under section 654.50(a)(5), it is then required, under section 654.50(a)(7), to collect any funds disbursed to students who fail to meet the requirements of 654.41.

Changes: None.

[FR Doc. 89-14526 Filed 6-19-89; 8:45 am]

PART 673-INCOME CONTINGENT LOAN PROGRAM

Note.-An asterisk (*) indicates provisions that are identical to provisions in Parts 674, 675 and 676.

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Subpart E-Due Diligence [Reserved]

Appendix A-Sample Promissory Note

Authority: 20 U.S.C. 1087a-1087e, unless otherwise noted.

Subpart A-Scope, Purpose, and General Definitions

Sec. 673.1 Purpose.

(a) The Income Contingent Loan (ICL) Program provides loans through institutions of higher education to financially needy students attending those institutions to help them pay their educational costs.

(b) The Secretary implements the ICL Program through the ICL Demonstration Project (Demonstration Project). Under the Demonstration Project, the Secretary provides funds to selected institutions of higher education, to establish a revolving ICL fund at the institution, in order to evaluate the feasibility of a program of student loans using income-based repayment plans.

(Authority: 20 U.S.C. 1087b)

Sec. 673.2 Definitions.

(a) Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year

Act

Award year

Campus-based programs

Clock-hour

College Work-Study (CWS) Program

Consolidation Loan Program

Defense loan

Dependent student

Direct loan

Enrolled

Guaranteed Student Loan (GSL) Program

Independent student

National Defense Student Loan Program

National Direct Student Loan (NDSL) Program (now called the Perkins Loan Program)

National of the United States

One-year training program

Parent

Pell Grant Program

Perkins Loan Program (formerly called the National Direct Student Loan Program)

PLUS Program

Postsecondary vocational institution

Proprietary institution of higher education

Public or private nonprofit institution of higher education

Recognized equivalent of a high school diploma

Regular student

Secretary

Six-month training program

State

State Student Incentive Grant (SSIG) Program

Supplemental Educational Opportunity Grants (SEOG) Program, and

Supplemental Loans for Students (SLS) Program

(b) The Perkins Loan Program (formerly National Direct Student Loan (NDSL) Program) regulations, 34 CFR Part 674, sets forth definitions of the following terms used in this part:

Acceleration

Default

Defaulted principal amount outstanding

Eligible program

Expected family contribution (EFC)

Financial need

Half-time graduate or professional student

Half-time undergraduate

Institution of higher education (institution)

Matured loans

Payment period

(c) The Secretary defines other terms used in this part as follows:

Adjusted gross income: The adjusted gross income (AGI) reported on the Federal income tax return.

Base income year: The most recent Federal tax year ending before November 1 of the calendar year preceding the calendar year for which a payment obligation is calculated.

Federal capital contribution (FCC): Federal funds provided to an institution in order to establish and maintain an ICL Fund.

Fund (ICL Fund): A fund established and maintained according to Sec. 673.21.

Grace period: A period of nine consecutive months, starting from the date the borrower ceases to be at least a half-time student at an institution of higher education, during which a borrower does not have to make payments.

Handicapped student: A student who meets the definition in section 602(1) of the Education of the Handicapped Act, as amended [20 U.S.C. 1401(1)], that is, a student who is mentally retarded, hard of hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or is otherwise health-impaired or has specific learning disabilities which require special education and related services.

Initial repayment period: The period of time beginning at the end of the grace period of a borrower and ending December 31 of the first complete calendar year after the end of the grace period.

Institutional capital contribution (ICC): Funds contributed by the institution in order to establish and maintain an ICL Fund.

Opening loan account balance: The principal and accrued interest outstanding on the date on which the grace period of a borrower ends.

(Authority: 20 U.S.C. 1087a-1087e)

Subpart B-Selection and Funding of Demonstration Projects

Sec. 673.11 Eligible applicants

An institution is eligible to apply for a grant to carry out an Income Contingent Loan (ICL) Demonstration Project if the institution—

(a) Participates in the current award year in the Pell, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Guaranteed Student Loan Programs;

(b) Offers at least one educational program—

(1) For which it awards a baccalaureate degree; or

(2) Which is at least a two-year program which is acceptable for full credit toward a baccalaureate degree;

(c) Has at least an aggregate of 500 students enrolled in the program(s) described in paragraph (b) of this section; and

(d) Has a Perkins Loan default rate, as defined in 34 CFR 674.6a(d) of no more than 7.5 percent as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(Authority: 20 U.S.C. 1087a, 1087b)

Sec. 673.12 Application for grants.

(a) New grants. An institution applies for a new grant for an ICL Demonstration Project by submitting an application that—

(1) Includes information that addresses each of the selection criteria set forth in Sec. 673.14(g), (h) and (i);

(2) Describes in detail the institution's plans for a Demonstration Project as outlined in Sec. 673.14(f); and

(3) Contains an assurance that the institution will comply with the requirements imposed under this part and will carry out a Demonstration Project for the five years for which the project is authorized.

(b) Continuation grants. An institution may apply for funds to continue an ICL Demonstration Project by submitting an application that reports the results of the institutional evaluation completed for the previous award year as set forth in the institution's original application and that requests additional funds.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087b)

Sec. 673.13 Evaluation of an application.

(a)(1) The Secretary uses the selection criteria in Sec. 673.14 to evaluate applications for new grants.

(2) The Secretary awards up to 120 points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses.

(b) The Secretary uses the selection criteria in Sec. 673.15 to evaluate applications for continuation grants.

(c)(1) After evaluating applications for new grants according to the criteria in Sec. 673.14, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition under this program. The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(2) The Secretary may select an application for funding to improve the diversity of activities or projects funded under a particular competition.

(Authority: 20 U.S.C. 1087b)

Sec. 673.14 Selection criteria—new grants.

(a) Findings of the latest ED program review. (15 points) The Secretary reviews the results of the latest ED program review in order to determine whether the applicant has demonstrated compliance with applicable statutes and regulations.

(b) Results of the institution's most recent audit report submitted to ED. (15 points) The Secretary reviews the results of the institution's most recent audit report submitted to ED to determine whether a significant misuse of Federal funds has been identified.

(c) The institution's total number of undergraduate students. (10 points) The Secretary reviews the total number of undergraduate students as reported by the institution on the Fiscal-Operations Report and Application to Participate (FISAP) in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG) and College Work-Study (CWS) Programs for the previous award year to determine whether the institution has experience in administering student assistance programs for a large number of students.

(d) Compliance with the Pell Grant Program reporting requirements. (10 points) The Secretary reviews ED records of the institution's compliance with all the deadline dates set by ED for the receipt of institutional payment summary (IPS) documents for the Pell Grant program for the award year prior to the award year for which the institution is applying for a demonstration grant.

(e) The institution's default rate under the Perkins Loan Program. (10 points) The Secretary evaluates the information provided by the institution on the FISAP to determine the institution's default rate under the Perkins Loan Program as of June 30 of the calendar year preceding the award year for which the institution applies for a grant. If the institution's default rate has changed since submission of the FISAP, the institution must submit revised Sections A and C of the FISAP in order for the Secretary to determine the institution's default rate under the Perkins Loan Program as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(f) Plan of operation. (20 points) (1) The Secretary reviews each application to evaluate the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the plan of operation shows—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) How the objectives of the project relate to the mission of the institution;

(iii) An effective plan to use institutional resources and personnel to achieve each objective;

(iv) A documented process to be used in selecting ICL borrowers; and

(v) An effective plan for publicizing the ICL Program.

(g) Quality of key personnel. (10 points)

(1) The Secretary reviews each application to evaluate the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary evaluates—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (g)(1) and (2) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in student financial aid administration, particularly the Perkins Loan Program, related to the objectives of the project, as well as other qualifications relevant to the quality of the project.

(h) Evaluation plan. (20 points) (1) The Secretary reviews each application to evaluate the quality of the evaluation plan for the Demonstration Project.

(2) The Secretary determines whether the applicant proposes methods of evaluation that are appropriate for the project and, to the extent possible, produce procedures that may be replicated.

(i) Willingness to overmatch. (10 points) The Secretary reviews each application to determine whether the applicant is willing to contribute institutional capital contribution to the loan fund exceeding that required under Sec. 673.21

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087b)

Sec. 673.15 Selection criteria—continuation grants.

(a) Compliance with performance and reporting requirements. The Secretary evaluates the FISAP to determine whether the institution has demonstrated a high degree of compliance with the performance and reporting requirements of the Perkins Loan program as evidence of continuing ability to implement the repayment administration activities required by the ICL Program.

(b) Evaluation. The Secretary determines whether the evaluation submitted by the institution of its experience with the Demonstration Project is thorough and indicates a high level of administrative capability and institutional commitment to the ICL Demonstration Project.

(Authority 20 U.S.C. 1087b)

Sec. 673.16 Determination of need for ICL Demonstration Project funds.

(a) The Secretary determines an institution's need for ICL Demonstration Project fund Federal Capital Contributions (FCC) according to 34 CFR 674.6, 674.7, and 674.7a.

(b) The amount of Perkins Loan FCC allocated to the institution is considered in determining remaining institutional need for ICL funds.

(Authority: 20 U.S.C. 1087b)

Sec. 673.17 Allocation of ICL Demonstration Project funds.

(a) The Secretary allocates ICL Demonstration Project funds to institutions on the basis of the institution's need for ICL funds determined in accordance with Sec. 673.16.

(b) If funds appropriated for the ICL Demonstration Project FCC are insufficient to fund the aggregate amount of unmet institutional need as determined in 34 CFR 674.6 for Demonstration Project Institutions, the Secretary allocates funds to institutions on the basis of—

(1) The ratio of each institution's unmet need to the aggregate amount of that need at all Demonstration Project Institutions; and

(2) The Secretary's determination of the amount of funds needed to create or sustain an ICL Demonstration Project at the institution at a level consistent with the purpose of the ICL Demonstration Project.

(c)(1) If an institution anticipates not using all of its allocation for an award year for ICLs and for authorized expenses by the end of that award year, it must specify the expected unused amount to the Secretary and return those funds, if directed.

(2) The Secretary distributes funds returned in accordance with paragraph (c)(1) of this section in a manner that best carries out the purposes of the ICL program.

(Authority: 20 U.S.C. 1087b(c))

Subpart C-General Provisions

Sec. 673.21 Program participation agreement.

To participate in the ICL Program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement provides that the institution shall deposit and maintain these funds in an interest-bearing account. The agreement further provides that-

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund-

(1) FCC appropriated under section 452(b) of the Act:

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Repayments of principal and interest;

(4) Penalty charges collected under Sec. 673.41 (b) and (c).

(5) Any other earnings of the Fund including any interest earned on the funds listed in paragraphs (a)(1) through (4) of this section; and

(6) Any short term, no-interest loans the institution makes to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for-

(1) Making ICLs to students;

(2) Administrative expenses as provided for in Sec. 673.31;

(3) Capital distributions in accordance with section 466 of the Act;

(4) Litigation costs;

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund; and

(6) Repayment of the short term, no-interest loans made to the Fund by the institution in anticipation of collections or recept of FCC.

(c) At least annually, the institution shall submit a report to the Secretary which contains information on loans in default-

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments;

(d) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The Secretary may require that the institution restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received for an ICL if the institution-

(1) Improperly disbursed the loan; or

(2) Failed to exercise due diligence in its collection of the defaulted loan.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.22 Student eligibility and selection requirements.

(a) Eligibility. A student is eligible to receive funds under the Income Contingent Loan Program at an institution of higher education if the student-

(1) Is a regular student:

(2) Is enrolled or accepted for enrollment as at least a half-time undergraduate student in an eligible program at that institution in accordance with Sec. 673.11(b);

(3)(i) Has a high school diploma or recognized equivalent; or

(ii) Is beyond the age of compulsory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(4)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands;

(5) Except as provided in paragraph (e)(2) of this section, has financial need. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order-

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) Directs the member to pursue the course of study or provides subsistence support to is members;

(6) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution:

(7) Does not owe a refund on a grant awarded under the Pell Grant, SEOG or SSIG programs to meet the cost of attending any institution:

(8) Is not in default on any loan made or guaranteed under the Title IV HEA programs to meet the cost of attending any institution; and

(9) Receives a preliminary or final determination from the institution of the student's eligibility or ineligibility for a Pell Grant.

(b) Overpayment. Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive. A student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive a ICL under the following conditions:

(1)(i) Overpayment of Pell Grant. If an institution makes an overpayment of a Pell Grant to a student, that student is eligible to receive an ICL if-

(A) The student is otherwise eligible: and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) Overpayment of a Pell Grant due to institutional error. If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (b)(1)(i)(B) of this section, it may continue to disburse an ICL to that student if the student-

(A) Is otherwise eligible; and

(B) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(2) Overpayment of an SEOG or SSIG. If an institution makes an overpayment of an SEOG or SSIG to a student, that student is eligible to receive an ICL if-

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(c) Default on loans. If a student is in default on a loan made or guaranteed under any title IV HEA Program for attendance at any institution, the institution may nevertheless make an ICL payment to that student under the following conditions:

(1)(i) Guaranteed loans. An institution may make an ICL or continue to advance funds to a student who is in default on a loan guaranteed under any Title IV HEA program if the Secretary (for a Federal insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(ii) Reliance on student's statement. An institution, in determining whether a student is in default on a loan guaranteed under any Title IV HEA program, may rely upon the student's written statement that he or she is not in default, unless the institution has information to the contrary.

(2) Perkins Loan. An institution may make an ICL to a student who is in default on a National Defense/Direct Student Loan or Perkins Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(d) Bankruptcy. The Secretary does not consider a loan made or guaranteed under a Title IV HEA program that is discharged in bankruptcy to be in default for purposes of paragraph (c) of this section.

(e) Selection. (1) An institution shall make ICLs reasonably available within each award year to the extent of available funds first to all eligible students who demonstrate financial need for the loan.

(2) An institution may then use those funds that remain available to make ICLs to eligible students who have not demonstrated financial need for the loan.

(3) The institution shall establish selection procedures and these procedures must be-

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the institution's files.

(4) The institution shall not make an ICL to a student who is unwilling to repay that loan. Default on a previous loan including a defaulted loan discharged in bankruptcy is evidence of that unwillingness.

(Authority: 20 U.S.C. 1087d)

Sec. 673.23 ICL loan maximums.

(a) Annual amounts. The maximum amount a student may borrow under the ICL program in an academic year is-

(1) $2,500 for a student enrolled in the first and second academic year of undergraduate study;

(2) $3,500 for a student enrolled in the third academic year of undergraduate study; and

(3) $4,500 for a student enrolled in the fourth and fifth academic years of undergraduate study.

(b) Aggregate amounts. The maximum aggregate amount an eligible student may borrow under the ICL program is $17,500.

(Authority: 20 U.S.C. 1087d(a))

Sec. 673.24 Allowable costs of attendance-1987-88.

(a) General. (1) Except as provided in paragraph (d) of this section a student's cost of attendance means-

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include-

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) The institution shall take into account when determining a student's cost of attendance-

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(b) Tuition and fees. (1) An institution shall determine the tuition and fees charged a full-time student by calculating-

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time undergraduate students for tuition and fees for an academic year.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g., In-State and Out-of-State) and elects to calculate an average charge for tuition and fees, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(c) Room and board. (1) The institution shall calculate a student's room and board allowance as follows-

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of not less than $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing-

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(d) Attendance costs for students in correspondence study programs. The cost of attendance for a student enrolled in a correspondence study program means-

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for-

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(e) Adjustments. An institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (d) of this section is not a reasonable approximation of the student's actual costs.

(f) Required documentation. An institution shall prepare and retain a written explanation of the cost of attendance figures established under this section.

(Authority: 20 U.S.C. 1087d)

Sec. 673.25 Expected family contribution-1987-88.

(a) Annual determinations. An institution shall determine a student's financial need at least annually.

(b)(1) To determine a student's financial need, an institution shall determine the student's EFC.

(2) To determine an EFC for the period of the student's award, an institution shall use one of the approved systems of need analysis as provided in Sec. 673.26.

(c) Native American students. In determining a Native American's EFC, an institution may not consider the following as income or assets of the student and his or her spouse or parent(s):

(1) Awards made under Pub. L. (98-64, the Distribution of Judgment Funds Act (25 U.S.C. 1401 et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), and the Maine Indian Claims Settlement Act (25 U.S.C. 1721 et seq.) However, if the awards under the first or second Acts individually exceed $2,000 only the awards under each of those Acts in excess of $2,000 shall be considered income or assets of the student or the student's spouse or parents;

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust by the U.S. Government for the student or the student's spouse or parent(s).

(d) Adjustments. An institution may, in individual cases, adjust an EFC computed according to one of the approved need analysis systems, as provided in Sec. 673.26, if-

(1) The EFC does not accurately reflect the student's, spouse's, or parent's ability to contribute; or

(2) The relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.26 Approved need and analysis systems-1987-88.

(a)(1) An institution shall use a need analysis system which is approved by the Secretary in determining a student's EFC.

(2) Any system of need analysis approved by the Secretary-

(i) Must consider in determining the amount a dependent student and his or her spouse and parent(s) are expected to contribute toward the student's costs of attendance-

(A) The number of the parents' dependent children;

(B) The number of the parents' dependent children attending institutions of higher education;

(C) Tuition costs of dependent children attending elementary and secondary schools; and

(D) Any unusual expenses of the student or the student's family, such as unusual medical or dental expenses;

(ii) Must consider in determining the amount an independent student and his or her spouse are expected to contribute toward the student's costs of attendance, the student's dependent children; and

(iii) Must produce expected parental contributions that-

(A) Increase incrementally as the parents' financial strength, measured in constant dollars, increases; and

(B) Are equal for parents of equal financial strength.

(3) The Secretary preapproves the need analysis systems described in paragraph (b) of this section, and approves other systems that meet the requirements of this section.

(b) Preapproved systems for dependent and independent students. The Secretary preapproves the following need analysis systems-

(1) The system that produces the expected family contribution number (FC) printed on the Student Aid Report provided to the student by the Secretary; and

(2) The EFC used in the Pell Grant Program (34 CFR Part 690).

(c) Application requirements. (1) An individual or organization wishing to have a need analysis system approved for an award year shall submit to the Secretary before the closing date published in the Federal Register the following:

(i) A complete description of its system of need analysis for dependent and independent students.

(ii) Its student application form(s) for undergraduate students.

(iii) The expected parental contributions its system produces for dependent undergraduate students under the sample cases published by the Secretary if the majority of students to be served by its system are undergraduates.

(iv) A complete calculation of how each expected parental contribution is derived, including enough information to allow the Secretary to duplicate these calculations and results.

(2) The Secretary does not accept the information specified in paragraph (c)(1) of this section in the form of computer programs, software, or mechanical devices.

(d) Expected parental contributions and sample cases. (1) For each award year, the Secretary publishes in the Federal Register sample cases and expected parental contributions for dependent undergraduate students.

(2) The Secretary computes the expected parental contributions for undergraduate dependent students by using sample cases which-

(i) Are based on families of varying sizes with two parents, the older of whom is 45 and is the sole wage earner, and one dependent undergraduate;

(ii) Deduct from the adjusted gross income of the student's working parent-

(A) The amount of Federal income tax (based on a joint return with standard deductions) and social security tax;

(B) An 8 percent allowance on taxable income for State and other taxes; and

(C) A Standard Maintenance Allowance for the family (excluding the applicant during the academic year) using the Department of Labor's estimates for a low budget standard of living;

(iii) Determine the parents' Discretionary Net Worth by deducting a Home and Other Asset Protection Allowance from the net market value of the parents' assets;

(iv) After considering the parents' available income, apply an asset conversion, rate against the parents' Discretionary Net Worth;

(v) Add the amounts determined under paragraph (d)(2)(ii) and (d)(2)(iv) of this section; and (vi) Apply to the amount determined under paragraph (d)(2)(v) of this section, taxation rate schedules for undergraduate students.

(3) The expected parental contributions published by the Secretary do not take into account-

(i) More than one family member attending an institution of higher education as an undergraduate, or graduate or professional student;

(ii) Business or farm assets;

(iii) Nontaxable income;

(iv) Unusual medical or dental expenses;

(v) Other unusual expenses; and

(vi) Elementary and secondary tuition expenses.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) To insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting-

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(e) Approval of systems. (1) The Secretary approves systems of need analysis for an award year if those systems-

(i) Satisfy the criteria set forth in paragraph (a)(2) of this section; and

(ii) Produce expected parental contributions that are within $50 in 75 percent of the sample cases published by the Secretary.

(2) If the Secretary approves an individual's or organization's system for dependent undergraduate students, the Secretary also approves that individual's or organization's system for independent undergraduate students.

(3) For each award year, the Secretary publishes in the Federal Register a list of approved need analysis systems that institutions shall use in calculating awards for that year.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.27 Overaward.

(a) Overaward prohibited. *(1) An institution may only award or disburse an ICL to a student selected pursuant to Sec. 673.22(e)(1) if the ICL, when combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an ICL to a student, the institution must take into account those resources it-

(i) Can reasonably anticipate at the time it awards ICL funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the ICL, and the total resources including the ICL exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the ICL, and the total resources including the ICL exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the ICL, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) Resources. (1) The Secretary considers that "resources" include, but are not limited to, any-

(i) Funds the students is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Waiver of tuition and fees;

(iii) Scholarship or grant, including ROTC or an athletic scholarship;

(iv) Fellowship or assistantship;

(v) Insurance programs for the student's education;

(vi) Veterans benefits;

(vii) Net earnings from employment, other than CWS employment for the period of the award except as provided in 34 CFR 675.23; and

(viii) Except as provided in paragraph (b)(3) of this section, long-term loans, including ICLs, made by the institution pursuant to Sec. 673.22(e)(2); and

(ix) Loans made under the GSL Program.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this

section that are included in the student's EFC.

(3) The student may use an ICL made pursuant to Sec. 673.22(e)(2), Supplemental Loans for Students (SLS), State-sponsored or private loan programs, or PLUS loans to substitute for his or her expected family contribution. However, if the loan amounts received under Sec. 673.22(e)(2) and under the PLUS or SLS program individually or collectively exceed the student's expected family contribution, the excess is a resource.

(c) Liability for and recovery of overpayments. (1) The student is liable for any overpayment of ICL advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its ICL fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment.

(d) Treatment of earnings in excess of need. An institution shall take the following steps when it learns that a borrower has earned, or will earn, $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087d)

Sec. 673.28 Coordination with BIA grants.

(a) To determine the amounts of an ICL for a student selected under Sec. 673.22(e)(1) who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid-

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess shall be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087d)

Sec. 673.29 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information-

(i) The name of the institution and the address to which communications and payments should be sent;

(ii) The principal amount of the loan;

(iii) The applicable interest rate on the loan and, if a variable rate, the manner in which it will be determined over the life of the loan;

(iv) The yearly and cumulative maximum amounts that may be borrowed;

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan;

(vi) The repayment terms which the institution may impose;

(vii) Special options the borrower may have for loan consolidation or other refinancing of the loan;

(viii) The borrower's right to prepay all or part of the loan at any time, without penalty and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or cancelled;

(ix) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency;

(x) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(xi) Any cost that may be assessed on the borrower in the collection of the loan including penalties and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing-

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (g) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{ICL}{N}$$

Where ICL=the total Income Contingent Loan awarded for an academic year and N=the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance ICL funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e) Subject to the requirements of paragraph (f) of this section-(1) An institution may advance loan proceeds directly to a registered student no more than 10 days before the first day of classes of a payment period, and

(2) An institution may advance loan proceeds by crediting a registered student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the ICL fund any funds advanced to a student who, before the first day of classes-

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the ICL, Perkins Loan programs is less than $501.

(h) A correspondence student shall submit his or her first completed lesson before receiving an advance.

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous calendar year, the institution shall not pay the student unless it verifies that information.

(j) An institutional official shall not obtain a student's power of attorney to authorize any disbursement or to authorize any crediting of a student's account.

(Authority: 20 U.S.C. 1087c; 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.30 Federal Interest in allocated funds-transfer of Fund.

(a) Funds received by an institution under the ICL program, including repayments on loans, are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for an ICL fund closes or no longer wants to participate in the program, the Secretary directs the institution to take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act;

(ii)(A) The transfer of the outstanding loans to another institution; or

(B) The transfer of the outstanding loans to the Department of Education.

(2) The Secretary considers the cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary directs that the outstanding loans be transferred to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those collections to be the second institution's ICC.

(4) If the Secretary directs that the outstanding loans be transferred to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(5) If more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the

basis of-

(i) The institution's demonstrated loan collection capability; and

(ii) The number of students of the first institution expected to enroll in the second institution.

(6) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087c)

Sec. 673.31 Use of funds.

(a) General. An institution shall deposit the funds it receives under the ICL program into its Fund. It may use these funds only for making loans and the other activities specified in Sec. 673.21(b).

(b) Administrative cost allowance. (1) An institution participating in the ICL program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year.

(2) For any award year, the maximum amount of the allowance equals five (5) percent of the institution's expenditures in that award year under the ICL Program.

(3) An institution shall use its administrative cost allowance to offset its costs of administering the ICL Program. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(4) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087c)

Sec. 673.32 Fiscal procedures and records.

(a) Fiscal procedures. (1) In administering its ICL program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section. However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either-

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) Account for ICL Fund. (1) An institution must maintain all the cash of its ICL Fund in a separate, federally insured interest-bearing bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not-

(i) Meet the requirements of paragraph (c) of this section, paragraph (d) of this section, or both;

(ii) Identify the cash balance of the ICL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's Federal ICL Fund account and must contain all the cash of the institution's ICL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, and any earnings of the Fund including interest.

(c) Deposit of ICC into Fund. An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that-

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a program and fiscal report. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all ICL applications for those students it reports on the program and fiscal report.

(5) The institution shall maintain all records relating to its applications for funds under this part.

(e) Retention of records-(1) Records. Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) Period of retention. Except for loan records and audit questions, an institution shall keep records for an award year for five years after it submits its program and fiscal report.

(3) Loan records. (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate that amount of each repayment credited to principal and interest respectively.

(ii) This history shall also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution shall retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's final repayment or cancellation.

(iv) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until the loan obligations are satisfied. The institution shall then return the original notes to the borrower marked paid in full. Only authorized personnel may have access to these documents.

(4) Separate ICL records. An institution shall keep ICL cancellation records separate from cancellation records on Perkins Loans, National Defense Student Loans, and National Direct Student Loans.

(5)(i) Microfilm or computer records. (i) An institution may keep the records required in this section (except those listed in paragraph (e)(3)(iv) of this section) on microfilm or in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microfilm, the source documents supporting the computer input.

(6) Audit question. An institution shall keep records on any claim or expenditure questioned by Federal or non-Federal audit until resolution of any audit questions.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.33 Compliance with equal credit opportunity requirements.

(a) In making an ICL an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the ICL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant or recipient to disclose his or her marital status, income from alimony, child support, and spouse's income and provide the spouse's signature.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840-0589)

Subpart D-Loan Terms and Conditions

Sec. 673.41 Permissible charges to students.

(a) Interest-(1) Rate. (i) The rate of interest that may be charged on an ICL must be, at the discretion of the instruction,-

(A) A fixed rate set at the rate determined in accordance with paragraph (a)(1)(ii) of this section for the calendar year in which the first disbursement is made; or

(B) A variable rate determined in accordance with paragraph (a)(1)(ii) of this section for each calendar year.

(ii) The applicable interest rate is the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 of the preceding calendar year plus three percent.

(2) Accrual. Interest accrues on the outstanding principal balance of an ICL from the date of disbursement of funds to the borrower.

(3) Capitalizing interest. The institution must add accrued unpaid interest to the principal balance of an ICL annually.

(b) Late charges. (1) The institution shall require that the borrower pay a late charge if the borrower fails-

(i) To repay all or part of a scheduled repayment when due; or

(ii) To submit the income information required to determine the annual repayment obligation by November 1.

(2) The institution shall determine the amount of the late charge based on either-

(i) Actual costs incurred in attempting to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure required payments or information from other borrowers.

(3) The institution may not require a borrower to pay charges imposed under this paragraph in an amount exceeding 20 percent of the most recent installment payment.

(c) Collection charges. The institution shall require that the borrower pay the institution for certain reasonable costs incurred by the institution or its agent in collecting any installment not paid when due in accordance with provisions of Subpart E.

(d) Non-authorized charges. No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(1) Costs other than those described in paragraphs (b) and (c) of this section associated with preparing letters or notices or making personal contacts or local telephone calls.

(2) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(3) Loan origination fees.

(Authority: 20 U.S.C. 1087d; 20 U.S.C. 1091a(b))

Sec. 673.42 Promissory note.

(a) Promissory note. (1) An institution may use only an ICL promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory note set forth in Appendix A. The institution shall not change the substance of the note set forth in the Appendix without the Secretary's approval.

(3) The institution-

(i) Shall print the note on one page, front and back; or

(ii) May print the note on more than one page if-

(A) The note requires the signature on each page by the borrower and any endorser; or

(B) Each page of the note states both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4.

(4) An institution shall not record on a single promissory note advances made under a fixed interest rate loan agreement with advances made under a variable interest rate loan agreement.

(5) If the institution records on a single promissory note advances made for an award year under a fixed interest rate loan agreement with advances made during any other award year, the institution shall identify on the note the applicable interest rate for each advance.

(b) Provisions of the promissory note.-(1) Interest. The promissory note must state that-

(i) The applicable interest rate on the loan as determined in Sec. 673.41(a)(1);

(ii) The manner in which that interest rate is determined and, if that rate is a variable rate, the way in which that rate will be calculated throughout the life of the loan; and

(iii) That interest shall accrue beginning on the day of disbursement and ending on the day that all principal, interest, and charges on the loan are satisfied.

(2) Repayment. (i) The promissory note must state that the repayment period-

(A) Begins 9 months after the month in which the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary;

(B) May begin earlier at the borrower's request; and

(C) Varies based on the frequency and amount of payments made under the income contingent repayment plan; and

(ii) The promissory note must state that the borrower shall repay the loan in equal quarterly, bimonthly, or monthly installments established and periodically modified by the institution.

(3) Cancellation. The promissory note must state that the unpaid balance of the loan shall be cancelled upon the death or total and permanent disability of the borrower.

(4) Prepayment. The promissory note must state that-

(i)The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to satisfy any accrued interest first and then to reduce the original loan amount, and shall not consider these amounts to be prepayments; and

(iii) If a borrower repays more than the amount then due under the repayment plan, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) Late charge. (i) An institution may state in the promissory note that the institution will charge a late charge of up to 20 percent of the amount of the borrower's installment payment most recently required if the borrower does not-

(A) Repay all or part of a scheduled repayment when due;

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment; or

(C) Submit the required income information to the institution by November 1 of each calendar year in accordance with Sec. 673.43(b)(4).

(ii) The institution may-

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Demand payment of the late charge from the borrower with the next scheduled repayment after the borrower receives notice of the late charge.

(6) Security and endorsement. The promissory note must state that the loan shall be made without security and endorsement unless-

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) Acceleration. The promissory note must state that an institution may demand immediate payment of the entire loan, including any penalty charges and accrued interest if the borrower does not-

(i) Make a scheduled repayment on time;

(ii) File cancellation or deferment form(s) with the institution on time; or

(iii) Submit the income information required under Sec. 673.43(b)(3) for a calendar year despite repeated requests by the institution.

(8) Cost of collection. The promissory note must state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(Authority: 20 U.S.C. 1087; 20 U.S.C. 1091a)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.43 Repayment plan.

(a) General. The institution shall use-

(1) The repayment plan set forth in this section; or

(2) An alternative income contingent repayment plan which has been approved by the Secretary.

(b) Payment obligation.

(1) The institution shall determine the payment obligation of the borrower for each calendar year of the repayment period as a percentage of the adjusted gross income of the borrower, and, if married at any time during the repayment period, of his or her spouse, determined according to the provisions of this paragraph.

(2) The institution may require the borrower to make monthly, bimonthly, or quarterly installment payments.

(3) In order to permit the institution to determine the annual repayment obligation of the borrower, the borrower shall submit the following to the institution by November 1 of each year of the repayment period:

(i) If the borrower or the spouse of the borrower filed a Federal income tax return for the base income year, a copy of those pages of this return which-

(A) Bear the signatures of the person or persons who filed the return; and

(B) Contain the statement of the adjusted gross income for the base income year of the person or persons who filed a return.

(ii) If the borrower or the spouse of the borrower did not file a Federal income tax return for the base income year, documentation of the amount and sources of all taxable income of the non-filer for the base income year.

(iii) If the institution determines that the income data from the base income year, as adjusted in accordance with this paragraph, may not accurately reflect the borrower's ability to repay during the year for which the institution is calculating the repayment obligation, documentation of the amount and sources of taxable income to the borrower and his or her spouse for the current year.

(4) The institution shall determine the adjusted gross income of the borrower and his or her spouse for purposes of this section by multiplying the adjusted gross income or taxable income, as appropriate, derived from information submitted in accordance with paragraph (b)(3) of this section, by an inflation factor announced annually by the Secretary.

(5) Subject to paragraph (b)(6) of this section, the institution shall calculate the borrower's annual repayment obligation as a percentage of the adjusted gross income as determined under paragraph (b)(4) of this section. The institution shall use the following matrix:

Income Contingent Loan Repayment Rates: Percent of Income Due as Loan Repayment

(6)(i) The institution shall determine the repayment obligation for any year or portion of a year in the initial repayment period in accordance with the matrix set forth in paragraph (b)(5) of this section, unless information needed to determine the ability of the borrower to repay is not submitted in accordance with the requirements of paragraph (b)(3) of this section. If this information is not submitted as required, the institution shall establish the annual repayment obligation as-

(A) Seven percent of the opening ICL balance, for a borrower with an opening ICL balance of less than $10,000;

(B) Six percent of the opening ICL balance, for a borrower with an opening ICL balance between $10,000 and $19,999; or

(C) Five percent of the opening ICL balance, for a borrower with an opening ICL balance of $20,000 or more.

(ii) The institution shall determine the repayment obligation for that part of the initial repayment period preceding the first full calendar year of repayment by-

(A) Determining the repayment obligation of the borrower in accordance with paragraph (b)(6) of this section;

(B) Dividing that amount by 12; and

(C) Multiplying the amount determined in paragraph (b)(6)(ii)(B) of this section by the number of complete months in the period for which the obligation is to be established.

(iii) The institution may, with the consent of the borrower, adjust the annual repayment obligation up to a level of 15% of the borrower's adjusted gross income to cover the annual accruing interest.

(iv) If the borrower demonstrates to the institution that both the borrower and his or her spouse will be in a repayment status on ICLs-

(A) The opening ICL account balance of the borrower and his or her spouse must be summed;

(B) The annual repayment obligation of the couple is determined using the matrix in paragraph (b)(5) of this section; and

(C) The annual repayment obligation of the borrower is determined by multiplying the total annual repayment obligation of the couple by the fraction of the summed opening ICL account balances of the couple owed by the borrower.

(Authority: 20 U.S.C. 1.087c; 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

Sec. 673.44 Deferment of repayment-financial hardship.

(a) In-school deferment. A borrower need not repay principal or interest during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this puprose.

(b) Financial hardship deferment. A borrower need not repay principal or interest during a period in which an institution determines that the borrower is unable to make the scheduled repayments due to extraordinary circumstances. Periods of financial hardship deferment may not exceed three years in the aggregate over the entire repayment period.

(c) Interest accrual. Interest continues to accrue and is capitalized during a deferment period.

(d) Requests for deferment. In order to receive a deferment, a borrower must request the deferment in writing and provide the institution with documentation needed to establish eligibility for the deferment.

(e) Loss of eligibility. A borrower whose loan has been accelerated is not eligible for deferment on that loan.

(Authority: 20 U.S.C. 1087d(a))

Sec. 673.45 Cancellation for death or disability.

(a) General. An institution shall cancel the unpaid balance of an ICL without regard to the repayment status of the loan, if the borrower dies or becomes totally and permanently disabled, in accordance with this section.

(b) Death. An institution shall cancel the unpaid balance of an ICL on the basis of a death certificate or other evidence of death that is conclusive under State law.

(c) Permanent and total disability. (1) An institution shall cancel the unpaid balance of an ICL loan if the institution determines, based on medical evidence certified by a physician which the borrower or his or her representative supplies, that the borrower became permanently and totally disabled after receiving the loan.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(Authority: 20 U.S.C. 1087d(a))

Subpart E-Due Diligence [Reserved]

Appendix A-Sample Promissory Note

Income Contingent Loan Program

I, —, promise to pay to — (hereinafter called the Lending Institution), located at —, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable costs and charges necessary for the collection of any amount not paid when due. I promise to pay interest on the outstanding balance owing on this loan, including late charges and collection costs, at the rate set forth in paragraph II of this note.

I further understand and agree that:

I. General

All sums advanced under this note are drawn from a fund created under Part D of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are available from the Lending Institution.

II. Interest

Interest is charged on this loan from the date of disbursement of any funds under this loan agreement. The interest rate on funds advanced under this agreement is [check applicable paragraph]-

( ) a fixed rate that is set at the time of the first advance of funds to me for an award year (July 1 through June 30). This fixed rate applies to all funds advanced to me for that award year until I repay those funds and any unpaid interest on those funds. This fixed rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the calendar quarter ending on September 30 of the calendar year preceding the award year in which the first disbursement is made. The rate that applies to funds advanced to me under this agreement is set forth in the schedule of advances included in this note.

( ) a variable rate that applies to all funds advanced to me under this loan agreement. This variable rate may change for each calendar year until I repay these funds and any unpaid interest on these funds. This variable rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the quarter ending on September 30 of the calendar year before the calendar year for which the rate applies.

III. Repayment

(1) I promise to begin to repay the principal and the interest which accrues on it to the Lending Institution not later than nine (9) months after the date I cease to be at least a half-time regular student at an eligible institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary).

(2) I may, if I choose, begin the repayment period earlier than the date on which I would be required to begin in paragraph III(1).

(3) I promise to repay the principal, interest, and any other charges over the course of the repayment period in monthly, bimonthly, or quarterly installments, as determined by the Lending Institution. A copy of the current payment formula which the Lending Institution will use to calculate my annual repayment obligation is attached to this note, and is part of this repayment agreement. The payment formula is subject to change by Federal regulation, and such changes, if any, will become part of this repayment agreement. I understand, however, that in no case will my annual repayment obligation be greater than 15% of my adjusted gross income and that of my spouse.

(4) I promise to submit to the Lending Institution the information on my income and, if I am married at any time during the repayment period on this loan, the information on the income of my spouse necessary to calculate my annual payment obligation. I promise to submit this information by November 1 of each year. I understand that continued failure to submit this information will constitute a default on this loan.

IV. Prepayment

(1) I may, at my option and without penalty, repay all or any part of the outstanding balance of this loan at any time.

(2) The Lending Institution will use any amounts I prepay in the same academic year in which the loan was made to reduce the amount of the loan.

(3) If I repay more than the amount due for any installment, and I do not designate it as an advance payment of the next regular installment, the Lending Institution will use the excess amount to prepay principal.

V. Default

(1) I understand that the Lending Institution may declare my loan to be in default and require immediate payment of the entire unpaid balance of my loan, including accrued interest, late charges, and collection costs, if-

(A) I fail to make a scheduled repayment of any installment when due under the repayment schedule established by the Lending Institution, or

(B) Despite demand by the institution, I fail to submit information regarding my income, and the income of my spouse, needed to calculate my repayment obligation.

(2) I understand that if I default on my loan, the Lending Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) I understand that after the Lending Institution accelerates the loan under paragraph V(1), I will then lose my right to defer repayments due after the date the Lending Institution accelerates the loan.

(4) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional Federal financial aid.

VI. Deferment

The Lending Institution may permit me to defer making my scheduled repayments if it determines that extraordinary circumstances, such as illness or unemployment, prevent me from making those scheduled repayments or when I am enrolled as at least a half-time student at an institution of higher education. I understand that I must request this deferment in writing on a timely basis. Interest will continue to accrue on the unpaid balance of my loan during periods of deferment. The Lending Institution will add the amount of interest that accrues during a period of deferment to the balance of my loan.

VII. Death and Disability Cancellation

If I should die or become permanently and totally disabled, the total principal, interest, and other charges on this loan shall be cancelled.

VIII. Change in Name, Address, and Social Security Number

I understand that I, and any party signing this note as a comaker or endorser, must inform the Lending Institution of any change in my name, address, or social security number.

IX. Late Charges

(1) The Lending Institution may impose a late charge if I fail to make all or any part of a scheduled installment payment when it is due.

(2) The Lending Institution may impose a late charge if I fail to provide by November 1 of each year, the required income information necessary to calculate my annual payment obligation.

(3) This charge may be up to 20 percent of the amount of the installment payment then due.

(4)(A) The Lending Institution may either-

(i) Add the amount of the late charge to the principal on the day after the missed scheduled repayment was due; or

(ii) Require that I repay it with a future scheduled repayment.

(B) If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

X. Prior Loans

I have listed below all of the ICL, Perkins Loans, and National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received state "None.")

Schedule of ICL, Perkins Loans, National Direct Student Loans and National Defense Student Loans at Other Institutions

XI. Schedule of Advances

The following amounts were advanced to me on the dates indicated:

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE LENDING INSTITUTION MUST SUPPLY TO YOU AND ANY ENDORSER A COPY OF THIS NOTE.

[This notice is signed as a sealed instrument.]

Signature ————

[(seal)].

Date ———— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (endorser must provide)————.

The borrower and Lending Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Lending Institution shall require the following endorsement:

Signature ————

[(Seal)].

Date———— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (borrower must provide)————.

Pt. 673, Appendix B, will not appear in the CFR

Appendix B-Summary of Comments and Responses

[Editorial Note.-This appendix will not appear in the Code of Federal Regulations.]

Comments and Responses

General

Comment: One commenter commended the Secretary's attempt to develop a loan program that aims to respond to the varying circumstances faced by students upon graduation. Another commenter noted that it is important to keep an open mind in the development of a new program and that the higher education community looks forward to the results. Several commenters recognized that in times of budgetary constraints, the elimination of interest subsidies is a necessary step to ensure continued funding for student aid programs.

Response: The Secretary agrees with the commenters. The ICL Program is designed to be both cost-effective to the taxpayer by reducing interest subsidy and default costs and beneficial to borrowers by extending the repayment period and providing flexibility through repayment which is tied to the borrower's income.

Comment: Many commenters opposed the proposed ICL Program because they felt that this program places the entire burden of the student loan on the student without any benefit to the student other than a longer repayment period which would be offset by large amounts of accrued interest. These commenters stated that the proposed ICL concept will be hard for students to understand fully and that when the students discover the magnitude of their ICL debt they will be forced into bypassing low-paying, service-oriented careers, such as teaching, in favor of more lucrative careers. A number of commenters felt that this program would lead to increased student loan indebtedness and, as a result, to increases in defaults. Several commenters believed that this program would be particularly intimidating to low-income and minority students for whom the extended repayment period could cause the greatest difficulties. A number of commenters felt that the elimination of any interest subsidy by the Government is inappropriate and that the Government should be willing to continue to invest in higher education for students.

Response: The Secretary emphasizes that the Federal Government is willing to continue to invest in higher education for students. However, because students are the principal beneficiaries of college education, it is appropriate that they assume more of the burden for making use of this support. Moreover, in the ICL Program, the Secretary believes that the benefits to the students far outweigh any additional burden.

The Secretary strongly believes that income-sensitive repayment as implemented in these ICL regulations is an equitable and reasonable approach to student debt manageability. The ICL Program provides a great deal of flexibility for institutions and borrowers who can therefore tailor repayment terms to fit their financial circumstances. Furthermore, under the ICL Program, there is a limit on the percentage of income a borrower is required to devote to repayment, unlike other fixed-rate, fixed-term loans which require equal payment installments and repayment within a specific time frame. Rather than pressuring borrowers to avoid careers in low-paying, service-oriented occupations, the ICL repayment method clearly facilitates such career choices.

Comment: One commenter applauded the Secretary for the flexibility provided to institutions in the proposed rule. Other commenters felt that the proposed regulations were too long and detailed.

Response: No change has been made. In the proposed rule, the Secretary repeated applicable sections of the Perkins Loan Program regulations to provide institutions in one package with all regulations governing the operational aspects of the program. Therefore, although the proposed regulations were long, many provisions were merely duplications of the Perkins Loan Program. The Secretary believes that having all the regulations in one package will make the program easier for an institution to administer.

Certain aspects of the ICL Program are set by statute, while others, such as determination of need, are traditional aspects of Title IV student aid programs. However, in other matters the rule allows the institution considerable discretion in the manner in which it can operate an ICL project. For example, the rule would allow an institution discretion to design and use its own method of determining the amount of the annual loan repayment obligations of its borrowers each year, subject to the approval of the Secretary. For these reasons the Secretary believes that these rules, insofar as they track customary Title IV practice, are not complex. Although some aspects of the program are new, he does not regard those as calling for more complex calculations than institutions already routinely perform, or have performed for them, in administering traditional Title IV programs.

Comment: A number of commenters opposed the proposed Income Contingent Loan Program, and preferred the current Perkins Loan Program. These commenters indicated that the income contingent repayment methodology could be tested by allowing an income contingent repayment plan as an alternative under the Perkins Loan Program.

Response: No change has been made. In the Higher Education Amendments of 1986, Congress authorized the Secretary to conduct an Income Contingent Direct Loan Demonstration Project beginning with the 1987-88 award year and charged the Secretary with providing an evaluation of the Demonstration Project to Congress. In any case, the Secretary prefers to establish a separate unsubsidized loan program rather than allowing an income contingent repayment feature in the heavily subsidized Perkins Loan Program.

Comment: Several commenters felt that five years is too short a period of time for the Demonstration Project to assess the feasibility of an income contingent repayment plan since few borrowers will be in the income contingent portion of their repayment.

Response: The five year duration of the Demonstration Project is set by statute. The Secretary would like to emphasize that borrowers under the ICL Program will be in repayment after the Demonstration Project period ends, and therefore, data will be available on those borrowers for longer than five years.

Comment: A number of commenters criticized the short comment period and suggested that the implementation of the Demonstration Project be delayed until further analysis has been completed and additional input has been provided from professional organizations and institutions.

Response: The law authorizing the Demonstration Project was enacted October 17, 1986, with the program to begin in the 1987-88 academic year. The shortness of the comment period is an unfortunate but necessary consequence of the need to establish rules to implement the program early enough to permit participating institutions to include Income Contingent Loans (ICL) in the student aid provided to students for courses beginning in September 1987. Obviously, the design of an Income Contingent Loan Program entails resolution of complex issues, and that is indeed one purpose of the Demonstration Project. Use of a more extended comment period might have marginally aided in resolving these issues, but delay in establishing operational rules for the Demonstration Project would ensure that ICLs would probably not be available to many borrowers at participating institutions until late in the academic year. On balance, therefore, the Secretary considered the use of a short comment period to be preferable to delay in providing operational rules. The Secretary believes that such a delay would be neither responsible nor responsive to the needs of students and institutions for whom the program was intended.

Section 673.2 Definitions.

Initial Repayment Period

Comment: Many commenters requested clarification of the proposed Initial Repayment Period because the initial repayment period set forth in the proposed rule would vary in length depending on the month in which the borrower left school and, thereby, arbitrarily benefit certain students.

Response: The Secretary has revised the definition of initial repayment period to be that part of the repayment period from the end of the grace period to the close of the first complete calendar year of the repayment period. The purpose of the initial repayment period is to allow borrowers to make lower payments during the period in which they are establishing a financial foundation. The Secretary believes that the revised definition allows sufficient time for borrowers to establish a financial foundation before they begin the portion of the repayment period in which payments are computed as a percentage of income. Although the length of the initial repayment period will still vary among students, the Secretary has defined the period to always end on December 31 for the administrative convenience of the institution which must calculate all subsequent repayments on that basis. In any case, even if the period does vary, holding the loan balance constant, a lower repayment in the initial repayment period simply leads to a higher repayment later; however the payments flow, the entire loan must be repaid.

Section 673.22 Student eligibility.

Comment: Many commenters asked for clarification of whether a borrower who has had a Title IV loan discharged in bankruptcy is eligible for an ICL.

Response: The Secretary wishes to clarify that an institution may consider a previous default on any loan, including a defaulted loan discharged in bankruptcy, as evidence of potential future unwillingness to repay an ICL. However, a defaulted loan discharged in bankruptcy in and of itself is not an automatic bar to student eligibility for an ICL.

Section 673.23 ICL maximums.

Comment: Many commenters felt that the aggregate loan amounts are too high and that the Secretary should modify them to match the Perkins Loan Program.

Response: The annual and aggregate loan amounts are set by statute and not by the Secretary. Therefore, no change has been made. The Secretary has proposed legislation for higher maximums in the expanded income-contingent loan program for FY 1988.

Section 673.27 Overaward.

Comment: One commenter felt that an institution should not be liable for an overpayment if it has made an attempt to collect the overpayment from the student but has not been successful in this attempt.

Response: No change has been made. The student is always liable for any overpayment of ICL advances made to him or her. In addition, the institution is liable for an overpayment which was made as a result of institutional error. Whether an institution is liable for the overpayment or not, it must make a reasonable attempt to recover the overpayment from the student. Traditionally, in the Title IV student aid programs, the institution is held liable for any incorrect actions which it takes. The Secretary does not believe that this policy should be changed.

Comment: One commenter suggested that net earnings from employment other than College Work Study (CWS) employment be allowed to replace the family contribution rather than be classified as a resource.

Response: No change has been made. In analyzing financial need and student resources for the Title IV programs, the Department has traditionally considered as a resource earnings from employment other than College Work Study for the award year unless those earnings are included in calculation of the student's expected family contribution. For consistency and ease in administration, the Secretary believes that the same method should be used in the ICL need analysis.

Section 673.29 Making and disbursing loans.

Comment: Because there are no loan application fees or loan origination fees in the ICL program, many commenters encouraged the Secretary to delete proposed Sec. 673.29(a)(1)(xi) which would have required the institution to provide the borrower with information concerning the amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of those charges from the proceeds of the loan.

Response: The Secretary agrees with the commenters and has deleted the subparagraph.

Section 673.30 Federal interest in allocated funds-transfer of funds.

Comment: One commenter was concerned that an institution which closes or no longer wants to participate in the ICL program would lose its institutional capital contribution when the fund was liquidated.

Response: No change has been made. The proposed procedures for liquidating an ICL fund are the same as those now governing liquidation of a Perkins Loan fund. Under those procedures, an institution may retain the institutional portion of the cash on hand in the fund, but must relinquish its interest in any outstanding loans. 34 CFR 674.17. The Secretary usually transfers these loans to a second institution which deposits in its loan fund all monies collected on the transferred outstanding loans.

Comment: One commenter felt that an institution which accepts the ICL portfolio of another institution should be entitled to an administrative cost allowance for collection of the transferred loans.

Response: No change has been made. Currently, for both the Perkins Loan and the proposed ICL Programs, the administrative cost allowance for an award year is based upon the expenditures during that year, and is not tied to collection costs. During the ICL Demonstration Project, the Secretary will explore the need for alternative methods of calculating administrative cost allowances.

Section 673.31 Use of funds.

Comment: Many commenters felt that the administrative cost allowance of 5% of Federal capital contribution expended in an award year is too low and that the administrative cost to an institution will far exceed this amount. The commenters suggested that the Secretary modify the regulation to mirror the practice in the Perkins Loan Program by allowing an administrative cost allowance of 5% of the funds advanced to students each year under the ICL Program. Some commenters suggested that during the Demonstration Project the Secretary evaluate the administrative cost allowance to determine if a calculation based on number of borrowers in repayment would be more appropriate for the ICL Program.

Response: The Secretary agrees with the commenters and has modified the regulations to increase the administrative cost allowance permitted to 5% of the total amount expended each award year under the ICL Program, rather than merely 5% of the FCC used. The Secretary plans to evaluate the method of calculating the administrative cost allowance during the Demonstration Project and is particularly interested in this regard in the cost to institutions of administering loans that are in repayment.

Section 673.32 Fiscal procedures and records.

Comment: One commenter felt that the recordkeeping requirements would prompt an institution to have a separate bank account for ICL, which would eliminate the positive financial rewards for the program fund which could result from institutional "pooling" of Title IV funds.

Response: No change has been made. The institution is expected to establish and maintain financial records that reflect all program transactions and create a clear audit trail. Unless the Secretary determines as a result of an audit or program review that an institution does not have an adequate accounting system, an institution is not required to have a separate bank account for ICL. These requirements are the same as those used for many years for the Perkins Loan Program. The Secretary does not believe any change is necessary or appropriate.

Section 673.41 Permissible charges to students.

Comment: The Secretary requested public comment on alternative methods of calculating interest rates for the ICL Program as well as the variable rate set forth in the NPRM.

Variable rate: Several commenters supported the variable rate set forth in the NPRM. One commenter noted that since there are other fixed interest rate loans in existence, one purpose of the ICL Demonstration Project would be to evaluate the use of a variable interest rate.

Several commenters opposed the use of a variable interest rate, citing the administrative difficulties to institutions in recalculating the rate annually as well as the unpredictability of the consequences of borrowing under the ICL Program for the students. One commenter noted that the variable rate as set forth has no cap and therefore, significant increases in market rates in the future could, as a result, present borrowers with unmanageable student loan debts. One commenter noted that the use of a variable interest rate combined with no interest subsidy will increase money available to institutions for making ICLs but will also greatly increase student indebtedness. Other commenters noted that the use of a variable interest rate will create difficulties for borrowers in understanding fully the extent of their ICL obligations and for institutions in counseling students regarding their total student loan indebtedness.

Fixed rate: Many commenters felt that a flat rate would be easier for institutions to administer and for borrowers to understand fully.

Weighted average rate: One commenter felt that the calculation of a weighted average interest rate was too complex and burdensome for institutions.

Variable fixed rate: Several commenters stated that a combination of the variable and fixed rate would be most equitable and easier to understand and to administer. They supported a variable rate while the borrower is in school and fixing the rate when the loan enters repayment. Two commenters suggested a fixed rate be used with a provision that the rate could be reduced based upon the variable annual rate but could never be increased.

Many commenters opposed the idea of providing students with the option of various methods of calculating the interest rate on their ICLs because this would force institutions to calculate and to administer the repayment on all the options, which would result in increased administrative burden. Several commenters suggested allowing institutions the option of choosing the method of interest rate calculation to be used.

Response: A change has been made. The final regulations reflect the recent legislative changes resulting from the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50, June 3, 1987. Section 454 of the Higher Education Act of 1965, as amended, provides that the interest rate to be charged on an ICL is, at the discretion of the institution, a fixed or a variable rate. The applicable interest rate is equal to the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 preceding that calendar year plus three percent. For fixed-rate loans, this rate is determined for the year in which the first disbursement of loan proceeds is made and remains in effect until the loan is repaid. For variable-rate loans, this rate will be reset annually. The Secretary will announce annually the variable interest rate applicable for the coming year. The Secretary intends to work with institutions selected for the demonstration project to attempt to ensure that enough borrowers utilize each type of rate to provide better information about the feasibility and desirability of both types.

In the preamble to the NPRM, the Secretary requested public comment on other alternative interest rate calculations. The Secretary is appreciative of the thorough and well-developed comments which were received.

Comment: Several commenters were opposed to basing the interest rate for ICLs on the 91-day Treasury bills and suggested that the 10 or 20 year Treasury notes more accurately reflect the Government's long-term cost of borrowing and would enable the rate to be a fixed rather than a variable rate.

Response: No change has been made since the statute directs the use of 91-day Treasury bill rates. However, the Secretary will carefully consider the commenters' suggestion in determining whether to seek an amendment to the statute concerning the interest rate calculation.

Comment: Many commenters objected to the provisions which require that interest accrue from the date of disbursement and that unpaid accrued interest be capitalized annually since these provisions greatly increase the borrower's debt while in school and, after graduation, could cause borrowers in a low-income/high-debt situation to pay interest on interest, and, in some cases, never to reduce their debt. One commenter suggested that the institution bill the borrower for interest on ICLs while the borrower is in school and capitalize interest only for those borrowers who are unable to pay the interest accruing during in-school periods. Another commenter suggested that unpaid interest be cancelled rather than capitalized to prevent the continued growth of the borrower's ICL debt.

Response: No change has been made. The Secretary has developed and the Congress has authorized the ICL Program as an unsubsidized student loan program to assist students further in financing their education but to reduce the cost of this assistance to the Government by eliminating any interest subsidy. Therefore, in order to increase the earnings of the Fund and make more money available to future student borrowers, decrease the need for future Federal capital supplements, and broaden the effectiveness of the pilot by increasing the number of loans that can be generated from the original Federal capital contribution, the Secretary will implement in these rules the requirement that interest on ICLs accrue from the date of disbursement of funds to the borrower as with other unsubsidized loan programs. In order to allow a borrower to postpone payment of accrued interest until the repayment period, the final rules, like the NPRM, provide that interest may be capitalized while the borrower is in school, during the grace period, during a period of authorized deferment and when payments made by a borrower for a given year are insufficient to meet accrued interest costs. Institutions may advise borrowers to pay the annual accrued interest while in school in order to prevent the growth of the borrower's ICL debt and, if the borrower requests, may bill the borrower for this interest.

Comment: One commenter felt that the institution should not be required to charge borrowers late charges because borrowers who are late with payments generally have financial difficulties and the addition of a late charge will create more financial hardship for these borrowers. Two commenters objected that a late charge of up to 20% is too high, and that a stated flat rate would be easier to administer.

Response: Although the Secretary agrees that late payments may reflect financial difficulties, the Secretary believes that a late charge which is reasonable and reflects the circumstances under which it is assessed is an appropriate means of emphasizing the importance of meeting one's student loan obligations. The rule has been clarified to make clear that the late charge must bear a reasonable relation to the cost to the institution of handling the failure to make the required submission. As discussed here and as clarified in the due diligence regulations to be published shortly, the late charge may include actual or average costs incurred in securing information needed to calculate a repayment obligation or in taking those steps included within the actions customarily considered to be within the billing cycle on a loan as opposed to those more costly efforts included in the collection cycle; the latter are separately addressed in Sec. 673.41(c). This procedure is consistent with that used in the Perkins Loan Program.

Section 673.42 Promissory note.

Comment: Two commenters suggested that the provision which requires institutions to use amounts repaid during an academic year to reduce the original loan amount be deleted since this would be extremely complicated to implement because using prepayments to reduce the original balance would require recalculation of all subsequent accrued interest charges.

Response: The Secretary agrees with the commenters and has modified the regulation to require institutions to use amounts repaid during the academic year in which the loan was made to pay any accrued interest first and then to reduce the original loan amount.

Section 673.43 Repayment plan.

Comment: Many commenters applauded the Secretary for allowing institutions to utilize either the repayment plan set forth in the proposed rule or an alternative plan approved by the Secretary as being responsive to the goals of the ICL Demonstration Project in exploring the feasibility of an income contingent repayment method.

Response: No change has been made. The Secretary agrees with the commenters that this provision allows the institution a considerable amount of discretion to design and to use its own method of determining the amount of loan repayments due from the borrowers each year subject to the approval of the Secretary.

Comment: Several commenters noted that the proposed fixed payment obligation mandated for the initial repayment period would, in many cases, be insufficient to cover the annual accrued interest, and would result in negative amortization. Other commenters suggested that the repayment obligation be modified to cover the annual accrued interest in order to prevent negative amortization.

Response: A change has been made. The Secretary has revised the annual payment obligation calculation for the initial repayment period to address this issue. Under the final rules the borrower has the option of using an annual payment calculation for the initial repayment period determined as a percentage of his or her income-that is, moving immediately into income contingent repayment-or having the annual payment calculated as a percentage of the opening ICL balance. If the borrower wishes to receive an income-based annual repayment obligation, he or she must submit information needed to make that determination in a timely manner; if that information is not submitted, the obligation must be based on the loan balance. In the latter case, a borrower with median total debt of $6,000 would pay $35 a month instead of the $30 proposed in the NPRM. This approach reduces the amount of negative amortization, particularly when the borrower has a large opening ICL balance. It also may allow a reduction in the maximum assessment rate during the regular repayment period, as further discussed below.

Comment: Many commenters supported the use of Adjusted Gross Income (AGI) reported on the Federal income tax return as the basis for determination of the annual loan repayment obligation. They felt that expanding the base to include a Modified Adjusted Gross Income (MAGI) would unduly complicate the administration of the program because other sources of income and expenses are not easily documented and because it would be burdensome for institutions to collect this information and calculate a MAGI. Several commenters believed that AGI ignores untaxed or specially-taxed income, and therefore they favored use of a MAGI in order to provide a more realistic picture of a borrower's ability to pay.

Several commenters felt that the income for the base income year, even when adjusted for inflation, does not reflect the borrower's financial situation at the time of repayment, particularly if there has been a large increase or decrease in income. Those commenters noted that there is no mechanism in the proposed rule for an individual adjustment under these circumstances.

A number of commenters pointed out that borrowers who do not file tax returns would not have an AGI to be assessed in determining an annual repayment obligation. The commenters suggested that several forms of records, including W-2 forms, IRS form 1099, payroll stubs, a notarized statement of earnings, and a notarized income worksheet provide acceptable documentation of income for non-tax filers. One commenter suggested that the institution use an AGI equal to the maximum income an individual may earn without filing a tax return. Several commenters suggested that non-tax filers pay the minimum repayment amount allowed during the initial repayment period.

Response: For borrowers who file a Federal income tax return, the Secretary has retained the definition of AGI published in the proposed rule. However, the Secretary has added a provision to allow the institutional loan administrator to utilize the current income of the borrower and his or her spouse in cases where the AGI for the base income year does not accurately reflect the borrower's ability to repay an ICL. The Secretary believes that the flexibility provided in these cases will allow an institution to determine a repayment obligation tailored to the borrower's income. For borrowers who do not file a Federal income tax return, the Secretary bases the annual repayment obligation on the sum of the amounts of taxable income from all sources received by the borrower and his or her spouse.

Comment: Many commenters opposed as extremely burdensome and costly for institutions to administer the requirements that borrowers provide by November 1 of each calendar year a copy of the Federal income tax return(s) filed by the borrower and his or her spouse for the preceding tax year and that the institution determine a borrower's payment obligation annually. One commenter questioned the institution's legal right to request the tax return. Many commenters felt that in order to obtain valid data on a timely basis, it would be necessary to secure cooperation from the Internal Revenue Service to provide, or to permit access to, this data.

Response: No change has been made. The ICL Program is defined by statute as utilizing an income contingent repayments method. In order to implement a repayment methodology which is contingent on the borrower's income, the Secretary believes that it is necessary to utilize the most readily available and easily verified indicator of a borrower's income, his or her Federal tax return. Furthermore, for the repayment obligation to be in fact contingent on the borrower's income, the Secretary believes it is necessary to evaluate the borrower's financial situation annually. The

Secretary has explored the possibilities of a tape match with the Internal Revenue Service (IRS) and has determined that technical difficulties make this option unavailable at this time. The Secretary considers the signed copy of the tax return itself to be sufficiently trustworthy for the purposes of this program, and does not believe it is necessary to require borrowers to request a copy from the IRS to submit to the institution since this would increase the burden on institutions and borrowers and would create unnecessary delays in determining annual payment obligations.

The Secretary wishes to emphasize that the borrower's requirement to submit the required income information is set forth in the promissory note, and agreement to comply with that requirement is the condition on which the loan is made. Any borrower who considers this disclosure to constitute an untoward intrusion into the privacy of the borrower and his or her spouse should not borrow under this program.

Comment: One commenter suggested that the institution be allowed to accelerate the entire ICL if the borrower fails to submit his or her tax return by November 1. Another commenter suggested that an institution impose a six-year fixed repayment plan on borrowers who fail to submit the income information on time. One commenter supported the Secretary's proposal discussed in the preamble to the NPRM to develop and publish an alternative repayment plan which utilizes national statistics showing the average annual earnings for college graduates for borrowers who fail to submit income information in a timely manner. Several commenters opposed this proposed alternative repayment plan as not reflective of the individual borrower's circumstances.

Response: The Secretary is still considering optional means of implementing the income contingent repayment method without requiring the collection of income tax forms from all borrowers, as well as an appropriate incentive for borrowers to provide the necessary income information on a timely basis and welcomes additional public comment. The Secretary believes that to impose a six-year fixed repayment plan on a borrower who is tardy in supplying income data would eliminate entirely the income contingent concept and the flexibility which it provides and is therefore not a desirable sanction at this time. The Secretary also believes that acceleration of the entire ICL for a borrower who merely fails to submit in a timely manner the required income information is too severe a penalty and would lead to an unnecessary increase in defaults. However, continued failure to submit required income information is a serious breach of the borrower's duty under the loan agreement, and constitutes a default. Acceleration is the normal consequence of any default, and therefore acceleration is, in such a case, an appropriate sanction for continued failure to supply required income information. This sanction, of course, would not apply during the initial repayment period. The institution at that time may simply determine the annual obligation as in Sec. 673.43(b)(6).

In these final regulations, borrowers who do not provide on a timely basis the income information required to determine their annual payment obligation will be charged a late charge of up to 20% of the amount of the borrower's most recently required payment; borrowers who persist in failing or refusing to supply the income information required are to be considered as being defaulted on their loans. Although the Secretary does not believe imposition of a fixed term, fixed payment schedule is an appropriate sanction for mere tardiness in submitting required income data, the Secretary does not intend to limit the customary discretion of the institution to set the terms of any repayment agreement reached with a borrower who has already defaulted on the loan, but wishes to resume payment. As with Perkins Loans, the institution may structure these curative agreements in the manner it considers necessary to recoup lost payments most effectively and prevent future lapses. The institution therefore does not need to agree to resumption of income contingent terms or other terms requiring submission of income tax forms in these curative agreements.

Comment: Many commenters felt that the income assessment rates set forth in the repayment matrix in the proposed rule are too high and that studies have shown that borrowers can only afford to use a maximum of 12% of their disposable income for all loan obligations.

Response: The Secretary concurs with the commenters that the maximum rate should be reduced to a lower level and has modified the repayment matrix accordingly. Furthermore, the repayment matrix has been modified to increase gradually the percentage of the borrower's income used to determine the annual payment obligation as the repayment period progresses to enable borrowers to have a larger percentage of their income available for other obligations which are incurred early in their careers. This also reflects the fact that, in general, the borrower's assets will increase over time, allowing a higher assessment against annual income over time without reducing the borrower's command over goods and services. Thus repayment rates are progressive over time.

Comment: Several commenters objected to the use of the borrower's spouse's income in determining the amount of the borrower's annual payment obligation and stated that the spouse has no legal responsibility to provide this information.

Response: No change has been made. In determining the amount of financial need for which a married independent student qualified to receive Federal aid under the Title IV programs, the Department has always considered the income and assets of both the student and his or her spouse. As stated in the preamble to the final rule regarding expected family contributions for the Guaranteed Student Loan Program for 1983-84, this practice rests on the economic reality that the marital unit benefits directly from the enhanced earning capacity gained from education financed with the student loan, and therefore Title IV need analysis customarily assesses the income and assets of both spouses in calculating the need for either one for a loan. 48 FR 14317, April 1, 1983. The Secretary believes that the same principle applies to the determination of the ability to repay a federally financed loan, and that the spouse's income should be considered in determining whether the borrower can repay at a faster rate, and thereby reducing the need for additional Federal support by more quickly replenishing the ICL fund at the lending institution.

The Secretary emphasizes that a prospective borrower who is currently married cannot honor the terms of the ICL loan if his or her spouse is unwilling to provide the required income information, and should not borrow under the ICL Program. A prospective borrower who is currently unmarried should be aware of the requirements that the borrower must provide spousal income information if the borrower later marries and that failure to provide income information of both the borrower and his or her spouse may result in the institution declaring the loan to be in default.

Comment: Several commenters opposed the suggestion in the preamble of the proposed rule indicating that the borrower and the institution could agree to biweekly payments because the benefit to the student in the reduction of interest costs is greatly outweighed by the administrative costs to the institution, and the student would receive a much greater benefit by merely making larger payments on a monthly basis.

Response: No change has been made. The institution has the right to require the borrower to repay the ICL in quarterly, bimonthly or monthly payments; a biweekly payment plan could nevertheless be agreed to by the institution and the borrower.

Section 673.44 Deferment of repayment.

Comment: Since many students transfer from one institution to another institution as undergraduates and also continue their education at the graduate level, many commenters were concerned that this section did not allow deferment of the loan during periods of half-time enrollment at an accredited institution of higher education. One commenter suggested an internship deferment for students who are serving an internship which is required to begin professional practice or service. One commenter questioned whether the grace period and subsequent initial repayment period could be repeated if the student borrower re-enrolls at another institution during the repayment period.

Response: The Secretary has added a provision to allow deferment of the principal and interest while the borrower is at least a half-time student at an institution of higher education. The Secretary wishes to clarify that, as under the Perkins Loan Program, students who re-enroll at an institution after the loan has entered repayment do not receive a second grace period. The Secretary believes that students who have entered repayment and then re-enroll in school are more likely to gain employment quickly and resume repayment ability, and that, as a result, they have less need for a second grace period and attendant initial repayment period. However, for ease of administration for the institution, students who have an ICL in repayment but re-enroll at an institution and then borrow under the ICL Program for that period of re-enrollment are entitled to a grace period and initial repayment period for any new ICLs.

Comment: Many commenters favored the deferment on the basis of financial hardship. One commenter requested clarification of what constitutes extraordinary circumstances. Another commenter felt that having interest continue to accrue and be capitalized during this period would defeat the purpose of the deferment since the borrower's outstanding debt would continue to grow. One commenter suggested that the regulations be amended to extend the financial hardship deferment beyond three years since certain circumstances which may result in financial hardship such as long-term, non-disabling illness may last more than three years.

Response: No change has been made. The Secretary believes that the loan officer should exercise professional judgment and require appropriate justification to determine what constitutes extraordinary circumstances and that this institutional flexibility is necessary to the ICL concept. Although the borrower's debt will increase during the deferment, the Secretary points out that this situation is inherent in any unsubsidized loan program and that the financial hardship deferment is to be used in situations in which a borrower is unable to make any substantial regular payments. The Secretary is continuing to limit the financial hardship deferment to three years because the loan officer has the flexibility to adjust the borrower's annual repayment obligation in situations when the financial hardship is long-term, but the borrower does not qualify for cancellation.

Section 673.45 Cancellation.

Comment: Many commenters felt that the repayment period for ICLs is too long and that a maximum repayment period should be set. Several commenters suggested that ICLs which have been in repayment for 25 to 30 years should be cancelled.

Response: No change has been made. The ICL concept is designed to permit borrowers, by repaying their debts based on their incomes, to spread the cost of their investment in postsecondary education over the period of enhanced earning made possible by that education.

To estimate the likely repayment terms needed to satisfy varying amounts of ICL debt at differing income levels, repayment models were devised based on the median salary for recent college graduates as determined by the Department in an annual survey ($17,567 in 1985), as well as salaries at the first ($13,395) and third ($22,677) quartiles with three levels of ICL debt. Salaries in each level were assumed to grow during the repayment period in accordance with the growth patterns as indicated by the Current Population Survey data from the Bureau of the Census and inflation rates of five and six percent. Next, three levels of ICL debt were matched to the income levels described here: First, the median student loan debt for that same population, $6,000, second, $15,000, and third, the maximum amount permitted under current ICL authority, $17,500. Each of the three levels of ICL debt were then amortized on the basis of these salaries and average interest rates of nine and ten percent. The repayment studies further assumed that the borrowers had uninterrupted employment, that they received no deferments, and that borrower income grew from the listed starting salaries in each case at a rate of five and six percent per year, respectively.

Based on these assumptions, borrowers in all of these three income levels can be expected to repay the full amounts borrowed, plus accrued interest, in periods ranging from nine to 23 years. Borrowers starting with salaries in the fifth percentile ($8,235 in 1985) were also matched with debt in the amount of $17,500; these borrowers were unable to repay their loans within a 30-year period under these assumptions. In order to have received ICL loans totalling $17,500, however, borrowers in this last hypothetical category must have successfully completed five years of undergraduate study; it is extremely doubtful that a significant number of ICL borrowers with that amount of ICL debt would actually be employed at this lowest of the earnings levels (fifth percentile) posited for purposes of this study. The Secretary expects that the great majority of ICL borrowers are thus reasonably likely to complete their repayments within 30 years and therefore that no cancellation provision is needed.

Furthermore, because the repayment remains contingent on the amount of the adjusted gross income of the

The Secretary, of course, is concerned about the difficulty that certain low-income borrowers may have in repaying their loans and will continue to review this issue in the future.

Subpart E-Due Diligence

Comment: Many commenters criticized the Secretary for publishing an NPRM and soliciting applications for the Demonstration Project without proposing due diligence requirements since institutions should be aware of all obligations under the program before deciding to participate.

Response: Although the NPRM and these regulations were published without due diligence requirements, the Secretary does not regard this fact as leaving applicant institutions with an unclear picture of their loan collection responsibilities. As the Secretary explained in the preamble to the NPRM, the ICL Program is modeled after the Perkins Loan Program. All applicants are required to demonstrate a thorough and effective familiarity with the loan collection rules in effect in the Perkins Loan Program. Based on that familiarity and the explanation that the ICL operational requirements would be modeled, where possible, on the Perikns Loan Program rules, and because proposed due diligence regulations for the Perkins Loan Program were published some time ago, and final regulations are nearing publication, the Secretary felt that it would be less confusing to institutions to defer promulgation of ICL due diligence requirements until the final Perkins Loan regulations are published. In any case, several months will elapse before any borrowers under the ICL program will cease to be enrolled at least half-time and institutions will have to follow due diligence procedures. The Secretary plans to issue an NPRM on the due diligence requirements for the ICL Program shortly after the final due diligence regulations for the Perkins Loan Program are published.

[FR Doc. 87-17724 Filed 8-4-87; 8:45 am]

PART 674-PERKINS LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429 unless otherwise noted.

1a. The Part heading and Note and Subparts A (consisting of Secs. 674.1 through 674.20), B (consisting of Secs. 674.31 through 674.39), and D (consisting of Secs. 674.51 through 674.60) of Part 674 of Title 34 of the Code of Regulations are revised to read as follows, and Appendices A, B, and C are revised, and Appendices D and E are added to read as follows:

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A-General Provisions

Sec.

674.1 Purpose and identification of common provisions.

674.2 Definitions.

*674.3 Application.

674.4 Allocation and reallocation.

674.5-674.7 [Reserved.]

674.8 Program participation agreement.

674.9 Student eligibility.

674.10 Selection of students for loans.

674.11 [Reserved.]

674.12 Loan maximums.

674.13 Reimbursement to the Fund.

674.14 Overaward.

*674.15 Coordination with BIA grants.

674.16 Making and disbursing loans.

674.17 Federal interest in allocated funds-transfer of Fund.

674.18 Use of funds.

674.19 Fiscal procedures and records.

674.20 Compliance with equal credit opportunity requirements.

Subpart B-Terms of Loans

Sec.

674.31 Promissory note.

674.32 Special terms: loans to less than half-time student borrowers.

674.33 Repayment.

674.34 Deferment of repayment-Perkins loans.

674.35 Deferment of repayment-Direct loans made on or after October 1, 1980.

674.36 Deferment of repayment-Direct loans made before October 1, 1980 and Defense loans.

674.37 Deferment procedures.

674.38 Postponement of loan repayments in anticipation of cancellation.

674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

Subpart C—Due Diligence

Sec.

674.41 Due diligence—general requirements.

674.42 Contact with the borrower.

674.43 Billing procedures.

674.44 Address searches.

674.45 Collection procedures.

674.46 Litigation procedures.

674.47 Costs chargeable to the Fund.

674.48 Use of contractors to perform billing and collection or other program activities.

674.49 Bankruptcy of borrower.

674.50 Assignment of defaulted loans to the United States.

Subpart D-Loan Cancellation

Sec.

674.51 Special definitions.

674.52 Cancellation procedures.

674.53 Teacher cancellation-Direct and Perkins loans.

674.54 Teacher cancellation-Defense loans.

674.55 Cancellation for service in a Head Start program.

674.56 Cancellation for military service.

674.57 Cancellation for volunteer service-Perkins loans.

674.58 Cancellation for death or disability.

674.59 No cancellation for prior service-no repayment refunded.

674.60 Reimbursement to institutions for loan cancellation.

Appendix A-Promissory Note-Perkins Loan

Appendix B-Promissory Note-Direct Loan

Appendix C-Promissory Note-Perkins Loan-Less Than Half-time Student Borrower

Appendix D-Promissory Note-Direct Loan-Less Than Half-time Student Borrower

Appendix E-Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment before January 1, 1986

Summary of Comments

Subpart A-General Provisions

Sec. 674.1 Purpose and identification of common provisions.

(a) The Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Perkins Loan Program authorized by Title IV-E of the Higher Education Act of 1965 and previously named the National Direct Student Loan Program is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV-E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common of all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV-E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, Sec. 137(d)(1))

Sec. 674.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
College Work-Study (CWS) Program
Defense loan
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan (ICL) Program
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Pell Grant Program
Perkins loan
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: (1) The total loan amount borrowed from an institution's Fund that has reached the repayment stage on those loans that are-

(i) Repayable monthly and in default at least 120 days; or

(ii) Repayable less frequently and in default at least 180 days; minus

(2) That portion of these loans that have been-

(i) Repaid or cancelled;

(ii) Referred to the Secretary;

(iii) Assigned to the Secretary;

(iv) Discharged in bankruptcy; and

(v) Subject to a satisfactory written repayment agreement with which the borrower is currently in compliance.

*Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

*Financial need: The difference between a student's cost of attendance and his or her EFC.

*Full-time student: An enrolled student who is carrying a full-time academic workload (other than by correspondence)-as determined by the institution-under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 38 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

Fund (Perkins Loan Fund): A fund established and maintained according to Sec. 674.8.

Graduate or professional student: A student who-

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time studnet. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

*Institution of higher education (institution): A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Matured loans: The total principal amount of all loans made to students from an institution's Fund minus the principal amount of loans made from the institution's Fund to students who-

(1) Are enrolled as at least half-time students; or

(2) Are still in their first grace period.

*Need-based employment: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

*Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Perkins Loan.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who-

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087hh)

***Sec. 674.3 Application.**

(a) To participate in the Perkins Loan Program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the Perkins Loan Program funds under section 462 of the HEA.

(Authority: 20 U.S.C. 1087bb)

Sec. 674.4 Allocation and reallocation.

(a) The Secretary allocates Federal capital contributions to institutions participating in the Perkins Loan program in accordance with section 462 of the HEA.

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Perkins Loan program in a manner that best carries out the purpose of section 462 of the HEA.

(c) As used in section 462 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(d) Payment to institutions. The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(Authority: 20 U.S.C. 1087bb)

Secs. 674.5-674.7 [Reserved]

Sec. 674.8 Program participation agreement.

To participate in the Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that-

(a) The institution shall establish and maintain a Fund and shall deposit unto the Fund-

(1) FCC received under this subpart;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Payments of principal, interest, late charges and collection costs on loans from the Fund;

(4) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(5) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(6) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for-

(1) Making loans to students;

(2) Administrative expenses as provided for in Sec. 674.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see Sec. 674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see Sec. 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information about loans in default-

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the

part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc-1, 1094)

(Approved by OMB under control #1840-0535)

Sec. 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Perkins Loan program for an award year if the student-

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order-

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student-

(1) A SAR as a result of applying for a grant under the Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for a SAR with a Pell Grant Processor; and

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan.

(Authority: 20 U.S.C. 1087dd and 1091)

Sec. 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under Sec. 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of it allocation to those students.

(c) The institution shall establish selection procedures and these procedures must be-

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.11 [Reserved]

Sec. 674.12 Loan maximums.

The cumulative maximum amount of Defense Loans, Direct loans and Perkins loans an eligible student may borrow is-

(a) $4,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(b) $9,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has not received the degree; and

(c) $18,000 for study toward a professional or graduate degree.

(d) The maximum amounts listed in paragraphs (a), (b) and (c) of this section include any amount borrowed previously under Title IV-E of the HEA at any institution, regardless of any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

Sec. 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of-

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed-

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section-

(1) That the institution-

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower or endorser even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd-1087hh)

Sec. 674.14 Overaward.

*(a) Overaward prohibited. (1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonable anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the loan amount, and the total resources including the loan exceed the student's need, the overaward is the amount that exceeds need.

*(b) Resources. (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) Treatment of resources in excess of need. An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Direct or Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) Liability for and recovery of overpayments. (1) A student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the over-awarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, constitute such a reasonable effort.

(Authority: 20 U.S.C. 1087dd, 1087hh)

***Sec. 674.15 Coordination with BIA grants.**

(a) To determine the amount of a loan for a student who isalso eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid-

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087dd)

Sec. 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing-

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e)(1) An institution may not advance a loan to a student for a payment period until the student is enrolled for that period.

(2) Subject to the requirements of paragraph (f) of this section-

(i) An institution may advance loan proceeds directly to an enrolled student no more than 10 days before the first day of classes of a payment period; and

(ii) An institution may advance loan proceeds by crediting an enrolled student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes-

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount theinstitution awards a student for an academic year under the Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(Authority: 20 U.S.C. 1987cc, 1087cc-1, 1087dd, 1091 and 1094)

(Approved by OMB under control #1840-0535)

Sec. 674.17 Federal interest in allocated funds-transfer of Fund.

*(a) Funds received by an institution under the Perkins Loan program, including repayments on loans, are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for a Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution.

(iii) The transfer of the outstanding loans to the Department of Education.

(2) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(3) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(4) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of-

(i) The offering institution's demonstrated loan collection capability; and

(ii) The number of students of the transferor institution expected to enroll in the offering institution.

(5) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

Sec. 674.18 Use of funds.

(a) General. An institution shall deposit the funds it receives under the Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in Sec. 674.8(b).

(b) Administrative cost allowance. (1) An institution participating in the Perkins Loan program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year under the Perkins Loan program.

(2) For any award year, the amount of the allowance equals-

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(2) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.28), and the amount of NDSLs and Perkins loans that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its cost of administering the CWS, SEOG and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(5) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

Sec. 674.19 Fiscal procedures and records.

(a) Fiscal procedures. (1) In administering its Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by-

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) Account for Perkins Loan Fund. (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not-

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is-

(i) Deposited in interest-bearing bank accounts that are-

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) Deposit of ICC into Fund. An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that-

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) Retention of records-(1) Records. Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) Loan records. (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, late charges and collection costs.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

*(3) Period of retention. (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least five years from the date on which a loan is assigned to the Department of Education, canceled or repaid.

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) Manner of retention of records. (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until-

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Perkins Loans.

*(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(vi) Only authorized personnel may have access to the loan documents.

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

(Approved by OMB under control #1840-0535)

Sec. 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa-1087hh)

(Approved by OMB under control #1840-0535)

Subpart B-Terms of Loans

Sec. 674.31 Promissory note.

(a) Promissory note. (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Appendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if-

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) Provisions of the promissory note-(1) Interest. The promissory note must state that-

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) Repayment. (i) Except as otherwise provided in Sec. 674.32, the promissory note must state that the repayment period-

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Perkins Loans and Direct Loans made before October 1, 1980, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see Sec. 674.33(b)), extensions of repayment (see Sec. 674.33(c)), or deferments (see Secs. 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan-

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) Cancellation. The promissory note must state that the unpaid principal, interest, late charges and collection costs on the loan are cancelled upon the death or permanent disability of the borrower.

(4) Prepayment. The promissory note must state that-
(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) Late charge. (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not-

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with Sec. 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be-

(1) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(2) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(3) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may-

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) Security and endorsement. The promissory note must state that the loan shall be made without security and endorsement unless-

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) Assignment. The promissory note must state that a note may only be assigned to-

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) Acceleration. The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not-

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) Cost of collection. The promissory note must state

that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) Disclosure of information. The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization-

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Authority: 20 U.S.C. 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins-

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of-

(i) Nine months from the date the loan was made, or
(ii) The end of a none-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a regular half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of Sec. 674.31.

(Authority: U.S.C. 1087dd)

Sec. 674.33 Repayment

(a) Repayment Plan. (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accured interest.

(iv) Principal.

(b) Minimum repayment rates-(1) Rounding monthly repayment amounts. If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) Minimum monthly repayment of Defense loans from one institution. An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if-

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) Minimum monthly repayment of Defense loans from more than one institution. If a borrower has received Defense loans from more than one institution and-

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) Minimum monthly repayment of Direct loans and Perkins loans from one Institution. The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if-

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) Minimum monthly repayment of Direct loans and Perkins loans from more than one institution. If a borrower has received Direct loans or Perkins loans from more than one institution and-

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions. If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) Minimum monthly repayment of loans from one institution with different interest rates. (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) Differing grace periods and deferments. If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) Hardship. The institution may reduce the borrower's scheduled repayments for a period of not more than one year if-

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see Sec. 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) Extension of repayment period-(1) Hardship. The institution may extend a borrower's repayment period due to hardship.

(2) Low-income individual. (i) For Direct and Perkins loans made on or after October 1, 1980. The institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines that the borrower will be a low-income individual during the course of the repayment period. The term "low-income individual" means an individual whose family's taxable income for the preceding calendar year did not exceed 150 percent of the poverty level established by the Bureau of the Census for that year. The individual's family includes the borrower and any spouse or legal dependents.

(ii) The institution may adjust the repayment schedule to reflect the income of that individual.

(iii) The institution shall review the borrower's status annually. If the borrower is no longer a low-income individual, the institution shall appropriately adjust the repayment period.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, Sec. 137(d) of Pub. L. 92-318)

Sec. 674.34 Deferment of repayment-Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at-

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is-

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer,

(4) A volunteer under Title I-Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes and allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph-

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which-

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying-

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that-

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its istitution program; and

(iii) The internship of residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months-

(1) During which the borrower is-

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower-

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), (e), and (f) of this section and the period described in paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(Authority: 20 U.S.C. 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.35 Deferment of repayment-Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayment on a Direct

Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at-

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need no repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is-

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.56);

(2) A Peace Corps volunteer;

(3) As volunteer under Title I-Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship-

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying-

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.36 Deferment of repayment-Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment-

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at-

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is-

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see Sec. 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under Title I-Part A of the Domestic Volunteer Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) (1) and (2) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

Sec. 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution-

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall-

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(Authority: 20 U.S.C. 425, 1087dd)

(Approved by OMB under control #1840-0535)

Sec. 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower-

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under Sec. 674.55, 674.56 or 674.57.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

(Approved by OMB under control #1840-0535)

Sec. 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in Sec. 674.31(b) (2), loan repayment terms; Sec. 674.33(b), minimum repayment rates; or Sec. 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

Subpart C—Due Diligence

Sec. 674.41 Due diligence—general requirements.

(a) General. Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower or any endorser.

(b) Due diligence with regard to endorser. If a borrower does not respond satisfactorily to the final demand letter required in Sec. 674.43(c)(2), an institution shall, in addition to pursuing the borrower, pursue recovery of the debt from any endorser using the steps described in this subpart.

(c) Coordination of information. An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.42 Contact with the borrower.

(a) Exit interview. (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan.

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(ix) The total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(3) At the time of the exit interview the institution shall—

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(4) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall—

(i) Provide the borrower, either in person or by mail the information described in paragraphs (a) (1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to the borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) Contact with the borrower during the initial and post deferment grace periods. (1)(i) For loans with a nine-month initial grace period (loans made before October 1, 1980, and loans made for periods of enrollment beginning after June 30, 1987 to borrowers with no outstanding balance on any Defense, Direct or Perkins loan made to the borrower prior to July 1, 1987, the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(Authority: U.S.C. 424, 1087cc, 1087cc-1)

(Approved by OMB under control #1840-0581)

Sec. 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use the following billing procedures:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment:

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to Sec. 674.47(a), the institution shall assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the later charge imposed for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with Sec. 674.31(b)(5) (See Appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in Sec. 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by OMB under control #1840-0581)

Sec. 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) Use of the Department of Education's skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) Litigation to collect the borrower's account is barred under the applicable statute of limitations;

(2) The account is assigned to the United States; or

(3) The account is written off under Sec. 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in Sec. 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with Sec. 674.43(f), the institution shall—

(1) Report the defaulted account to a credit bureau, unless specifically prohibited by State law; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution shall select one or more credit bureaus for its information referrals with due regard for the coverage provided by the bureau or bureaus. An institution may select a bureau which serves—

(i) The areas from which the major portion of its students was drawn; or

(ii) The areas in which all or a major portion of its alumni/ae now reside.

(2) An institution shall report, according to the reporting procedures of the bureau, any changes in account status to the bureau to which it reported the defaulted account, and shall respond promptly and accurately to any inquiry from any bureau regarding the information reported on the loan account.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall either—

(i) Litigate; or

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall, unless specifically prohibited by State law, refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in a repayment status described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until recovery in litigation to collect the account would be barred under the applicable statute of limitations.

(e)(1) Subject to Sec. 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and Secs. 674.44, 674.46, 674. 48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 424, 1087cc, 1091a)

(Approved by OMB under control #1840-0581)

Sec. 674.46 Litigation procedures.

(a)(1) If the collection efforts described in Sec. 674.45 do not result in the repayment of a loan, the institution shall determine at least annually, until litigation to collect the account is barred under the applicable statute of limitations, whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Perkins, National Direct and National Defense Student Loans held by that institution, is more than $200;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the oustanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in Sec. 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in Sec. 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.47 Costs chargeable to the Fund.

(a) General: Billing costs. (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to Sec. 674.43.

(b) General: Collection costs. (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to Secs. 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount on the past-due payments late charges, and these collection costs, the institution may charge and Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) Waiver: Late charges. The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) Waiver: Collection costs. Before filing suit on a loan, the institution may waive that percentage of the collection costs applicable to the amount then past due on the loan equal to the percentage of that past-due balance that the borrower pays within 30 days of the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(e) Limitations on costs charged to the Fund. The institution may charge to the Fund the following costs not paid by the borrower, including amounts waived under paragraph (d) of this section:

(1) A reasonable amount for the cost of a successful address search required in Sec. 674.44(b).

(2) Costs related to the use of credit bureaus as provided in Sec. 674.45(b)(1).

(3) For first collection efforts pursuant to Sec. 674.45(a)(2), an amount that does not exceed 33 1/3 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to Sec. 674.45(c)(1)(ii), an amount that does not exceed 50 percent of the amount of principal, interest and late charges collected.

(5) For litigation costs, including attorney's fees, court costs and other related costs, an amount which does not exceed—

(i) Actual costs incurred in taking specific actions in bankruptcy proceedings required or authorized under Sec. 674.49;

(ii) That portion of costs of other actions in bankruptcy proceedings which, together with costs authorized and incurred under paragraph (e)(5)(i) of this section, do not exceed one-third of the total amount of the judgment obtained on the loan; and

(iii) In all other cases, 50 percent of the amount of the, judgment obtained against the borrower.

(6) If a collection firm performs or contracts for the performance of both collection and litigation activities on a defaulted loan, an amount for both of the functions that does not exceed 33 1/3 percent of the amount of principal, interest and late charges collected by a first collection effort as required in Sec. 674.45(a), or 50 percent for a second collection effort as required in Sec. 674.45(c)(1).

(f) Records. For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in Sec. 674.19.

(g) Write-offs. (1) An institution may write off an account if—

(i)(A) It carries out the procedures in Secs. 674.43, 674.44 and 674.45; and

(B) The total amount owing on a borrower's loan account held by that institution, including outstanding principal, accrued interest, late charges and collection costs on all of the borrower's Perkins, Direct and Defense Student Loans is $200.00 or less; or

(ii)(A) The loan is discharged in bankruptcy; and

(B) The institution has exhausted the procedures in this subpart with regard to any endorser.

(2) An institution which writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

Sec. 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under Sec. 674.43, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount is receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately upon receipt in an institutional trust account; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower promptly in an institutional trust account, after deducting its fees, if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out Sec. 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

(Authority: 20 U.S.C. 424, 1087cc).

(Approved by OMB under control #1840-0581)

Sec. 674.49 Bankruptcy of borrower.

(a) General. If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(1) Against the borrower; and

(2) If the borrower has filed for relief under Chapter 12 or 13 of the Bankruptcy Code, against any endorser.

(b) Proof of claim. The institution shall file a proof of claim in thebankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) Borrower's request for determination of dischargeability. (1) the institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under Chapter 7, 11, or 12 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under Subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination ofdischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) Request for determination of non-dischargeability. The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) Chapter 13 repayment plan. (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the Chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than five years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) Resumption of collection from the borrower. The institution shall resume bill and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, 11 U.S.C. 1228, or 11 U.S.C. 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii) (A) The loan entered the repayment period more than five years, excluding periods of deferment, before the filing of the petition, and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) after completion of a repayment plan which made no provisions with regard to either—

(i) The loan obligation; or

(ii) Unsecured claims in general.

(g) Resumption of collection from the endorser. The institution shall resume billing and collection action against an endorser of a borrower who has filed for relief under Chapter 12 or 13 of the Code after the borrower's case has been completed or dismissed, or the stay applicable to such action has been lifted.

(h) Termination of collection and write-off. (1) An institution shall terminate all collection action and write off a loan on which there is no endorser if it receives-

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than 5 years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed;

(ii) A discharge order, other than an order under 11 U.S.C. 1238(b), in a case brought under Chapter 13 of the Code; or

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(3) An institution may write off a loan on which there is an endorser only after it has exhausted the procedures in this subpart with regard to the endorser.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by OMB under control #1840-0581)

Sec. 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if—

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in Sec. 674.45(a) and litigation, if required under Sec. 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The total amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges, is greater than $200.00; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall submit to the Secretary the following documents for any loan it proposes to assign;

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in Sec. 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferred and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, biling, collection or litigtion services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) If the institution has a default rate as calculated under Sec. 674.2 greater than 7.5 percent as of June 30 of the second year preceding the submission period, documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The institution shall reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by OMB under control #1840-0581)

Subpart D-Loan Cancellation

Sec. 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) Academic year or its equivalent for elementary and secondary schools and special education: (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) Academic year or its equivalent for institutions of higher education: A period of time in which a full-time student is expected to complete-

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) Chapter I children: Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) Elementary school: A school that provides elementary education, including education below grade 1, as determined by-

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) Handicapped children: Children of ages 3 through 21 inclusive who require special education and related services because they are-

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(f) Local educational agency: (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) Secondary school: (1) A school that provides secondary education, as determined by-

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) State education agency: (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) Teacher: (1) A teacher is a person who provides-

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

(iii) Physical or occupational therapy.

(iv) Recreational therapy.

(Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1)).

Sec. 674.52 Cancellation procedures.

(a) Application for cancellation. To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if-

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated-

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under Secs. 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military or VISTA service is granted.

(Authority: 20 U.S.C. 425, 1087ee.)

(Approved by OMB under control #1840-0535)

Sec. 674.53 Teacher cancellation-Direct and Perkins loans.

(a) Cancellation for full-time teaching in an elementary or secondary school serving low-income students. (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that-

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) Cancellation for full-time teaching of the handicapped. (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) Cancellation rates. (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are-

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) Teaching in a school system. The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) Teaching children and adults. A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 1067ee.)

Sec. 674.54 Teacher cancellation-Defense loans.

(a) Cancellation for full-time teaching. (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in-

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) Cancellation for full-time teaching in an elementary or secondary school serving low-income students. (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that-

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

(c) Cancellation for full-time teaching of the handicapped. (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) Teaching in a school system. The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) Teaching children and adults. A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3).)

Sec. 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if-

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(Authority: 20 U.S.C. 425.)

Sec. 674.56 Cancellation for military service.

(a) Cancellation on a Defense loan. (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) Cancellation of a Direct or Perkins loan. (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 425(b)(3) and 1087ee.)

Sec. 674.57 Cancellation for volunteer service-Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under-

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973.

(b) Cancellation rates are-

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee.)

Sec. 674.58 Cancellation for death or disability.

(a) Death. An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) Permanent and total disability. (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) No Federal reimbursement. No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) Retroactive. Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Authority: 20 U.S.C. 425 and 1087dd and Sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

(Approved by OMB under control #1840-0535)

Sec. 674.59 No cancellation for prior service-no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed-

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

Sec. 674.60 Reimbursement to institutions for loan cancellation.

(a) Reimbursement for Defense loan cancellation. (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under Secs. 674.54 and 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) Reimbursement for Direct and Perkins loan cancellation. The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under Secs. 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Appendix A-Promissory Note-Perkins Loan

Perkins Loan Program: PERKINS LOAN

[Any bracketed clause or paragraph may be included at option of institution.]

I, — promise to pay to — (hereinafter called the Institution) located at — the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures For Receiving Deferment or Cancellation. I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all may outstanding Perkins Loans including those received from other institutions. The amount of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if-

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Article VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am-

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years-

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months-

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service-

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of the teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if-

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate to 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the U.S.C.

(2) This loan will be cancelled at the rate of 12\1/2\ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service-

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunter Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if-

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may-

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to-

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of Perkins Loans at Other Institutions

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of Borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature — [(seal)].

Date — 19-.

Permanent Address (Street or Box Number, City, State, and Zip Code).

Social Security Number (borrower must provide)

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner — [(seal)].

Date — 19-.

Permanent Address (Street or Box Number, City, State, Zip Code).

(Authority: 20 U.S.C. 1087dd)

Appendix B-Promissory Note-Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, — promise to pay to — (hereinafter called the Institution) located at — the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures for Receiving Deferment or Cancellation. I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).]

[(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.]

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment, unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs, if-

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am-

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service-

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if-

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if-

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may-

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to-

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loan I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL STUDENT LOANS AT OTHER INSTITUTIONS.

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the date indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWERS: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature ———— [(seal)]

Date ———— 19—

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner —— [(seal)]

Date ———— 19—

Permanent Address (Street or Box Number, City, State, and Zip Code)

(Authority: 20 U.S.C. 1087dd.)

Appendix C-Promissory Note-Perkins Loan-Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, —— promise to pay to —— (hereinafter called the Institution) located at —— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures For Receiving Deferment or Cancellation. I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in

writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Lending Institution over a period beginning-

(i) On the date of the next scheduled installment payment on any other outstanding Perkins Loan I have received; or

(ii) If I have no other outstanding Perkins Loans, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraph III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Lending Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if-

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles IV, VII, VIII, IX, X, or XI of this agreeemnt.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant informaion, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining

additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accure, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am-

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years-

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother or preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six months-

(i) That follows by six months or less of a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service-

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if-

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented request to the Lending Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service-

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if-

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may-

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to-

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

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XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY CO-SIGNER.

[This notice is signed as a sealed instrument.]

Signature —— [(seal)].

Date —— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner —— [(seal)].

Date —— 19—.

Permanent Address (Street or Box Number, City, State, Zip Code)

(Authority: 20 U.S.C. 1087dd)

Appendix D-Promissory Note-Direct Loan-Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, —— promise to pay to ——(hereinafter called the Institution) located at —— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) Applicable Law. All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) Procedures for Receiving Deferment or Cancellation. I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to provide that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning-

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institaution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this laon at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owned at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayment or extend the repayments period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charge and collection costs, if-

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles, VI, VII, VIII, IX and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant inforrmation, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date of Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am-

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service-

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understanding that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if-

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12 1/2 percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if-

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may-

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to-

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of Perkins Loans, National Direct Student Loans, and National Defense Student Loans at Other institutions

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature——[(seal)].

Date——19—.

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner——[(seal)].

Date——19—.

Permanent Address (Street or Box Number, City, State, Zip Code)

(Authority: 20 U.S.C. 1087dd)

Appendix E-Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Note.-In the below table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

	Installment due dates--Missed payments						
Monthly repayment schedule	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	Separate monthly maximum penalty charges
1st Past due installment	$1						$1
2nd Past due installment		$1 + $2					3
3rd Past due installment			$3 + $2				5
4th Past due installment				$5 + $2			7
5th Past due installment					$7 + $2		9
6th Past due installment						$9 + $2	11
Cumulative maximum subtotals.	1	4	9	16	25	36	

Biomonthly repayment schedule	Installment due dates--Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3			$3
2nd Past due installment		$3 + $3		6
3rd Past due installment			$6 + $3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates--Missed payments		Separate bimonthly maximum penalty charges
	Jan. 2	Apr.2	
1st Past due installment	$6		$6
2nd Past due installment		$6 + $6	12
Cumulative maximum subtotals	6	18	

Summary of Comments

Perkins Loan Program: Final Regulations, November 30, 1987—Comments and Responses

Section 674.41 Due diligence—general requirements.

Comment: Several commenters disagreed with the proposal that institutions be required to use the same collection procedures to collect Perkins Loans that they use to collect other institutional debts. Several commenters indicated that the procedures used in collecting institutional debts should not be used in collecting Perkins Loans because the students may no longer be in school and because of the specialized provisions in the Perkins Loan Program such as deferment, postponement, and cancellation. Several commenters suggested that the determination as to which procedures to use should be left to the institution.

One commenter suggested that the regulations require the withholding of transcripts, grades, and further services regardless of institutional practices.

Response: A change has been made. The Secretary agrees with the commenters that using the same procedures to collect Perkins Loan debts as are used to collect other institutional debts may not be effective because of the dissimilarities between the two debts. Therefore, the proposal previously made in Sec. 674.41(a)(3) that the institution use those collection procedures to collect Perkins Loans that it uses to collect other debts has been deleted. There is no statutory mandate that institutions withhold academic transcripts and other services; however, an institution may adopt that practice as its institutional policy.

Comment: Several commenters stated that the regulations should not mandate that all information be shared routinely among offices of the institution. The commenters suggested that institutional offices should be required to share information only as necessary to support billing and collection functions, and that the word "routinely" should be eliminated.

Response: A change has been made. The Secretary agrees with the commenters and in order to reduce regulatory burden, has reworded Sec. 674.41(c) to require institutional offices to share information as necessary to support billing and collection functions.

Comment: Several commenters believed that the proposed rule required the institution to share routinely current addresses obtained from the Internal Revenue Service (IRS) skip-tracing service. They stated that these addresses should not be "routinely shared" unless the lending institution receives independent verification of the address. Several commenters, based on the same reading of the rules, expressed concern that institutions that followed the rules as written would incur penalties for misuse of IRS skip-tracing information.

Response: No change has been made. The regulations required sharing of information "in order to determine" certain information needed by the institution for its billing and collection functions. When arranging the exchange of information among its offices, the institution can readily identify the student without disseminatin the address derived from IRS reports. The regulation does not require the offices of the institution to share information for any other purpose, and neither authorizes nor permits disclosure of information derived from the IRS to components of the institution which are not directly responsible for collecting Perkins Loan accounts.

Comment: Many commenters supported the proposal in Sec. 674.41(b) which directed the institution to attempt to collect from the endorser after a borrower fails to respond to the first overdue notice. Several of these commenters suggested that collections from endorsers should begin 90 days after the final demand letter. Others felt that the regulations should require endorsers on all loans unless the borrower is over 21 years of age, thus making the endorser (usually a parent) more aware of the responsibility that the student has undertaken.

Many of the commenters raised concerns regarding the use of an endorser on loans. Some of the concerns were: the extent to which the endorser is legally responsible for payment; when the endorser should be required to repay the debt; the amount to be repaid; and whether or not all the steps in the due diligence requirements should apply to the endorser.

The majority of the commenters believed that the decision on when an endorser should be required to make repayments should not be mandated early in the billing cycle, but should be at the institution's discretion.

Response: A change has been made. Based on the comments received, the Secretary has changed the regulation to require the institution to bill the endorser after the borrower fails to respond to the final demand letter rather than to the first overdue notice. The Secretary believes that contact with the endorser prior to the final demand letter is not cost-effective or appropriate because the borrower is the actual recipient and beneficiary of the loan and should be held primarily responsible for repayment to the extent possible. However, by his or her endorsement, the endorser agreed to be responsible for the amount advanced on the note if that amount was not repaid by the borrower. The sample promissory note contains no limitation on the endorser's promise to pay the amount due on the note, and the institution must therefore attempt at that point to collect from the endorser the full amount then due from the borrower.

Section 674.42 Contact with the borrower.

Comment: Several commenters stated that some institutions prepare a new promissory note with each advance to a student, and providing students with copies of all notes at the exit interview as required in Sec. 674.42(a)(3)(ii), would needlessly duplicate paperwork.

Response: No change has been made. Borrowers may frequently have lost earlier copies provided to them. The Secretary believes that the burden of providing a borrower with a copy of his or her promissory notes at the exit interview is more than justified by the benefit derived from reinforcing the individual's awareness of the obligation to repay the debt.

Comment: Several commenters opposed Sec. 674.42(a)(2)(vi) which states that an institution must disclose, at the exit interview, an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and a statement that the borrower has the right to prepay all or part of the loans at any time without penalty. The commenters were opposed to this disclosure requirement because they believed it is not the institution's responsibility to make such information know to a borrower. It is the belief of several commenters that institutions have no control or direct involvement in these procedures, and therefore, run the risk of misinforming students.

Response: No change has been made. The requirement that the institution explain any special options the borrower may have for loan consolidation or other refinancing of the loan and the borrower's right to prepay all or part of the loans at any time without penalty is mandated by Section 463A of the Higher Education Act of 1965, as amended (HEA).

Comment: One commenter stated that it appears that the Secretary has no statutory authority for requiring that institutions provide, during the exit interview, disclosure information required under the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98-79). The statute provides only that this information must be disclosed "prior to the start of the repayment period."

Response: No change has been made. Although the statute does not specifically require disclosure of this information to the borrower during the exit interview, it does require disclosure prior to the start of the repayment period. The Secretary concludes that providing this information during the exit interview is well suited to protect the Government's interest in securing repayment of the loans. This forum provides a suitable opportunity for the debtor to raise questions regarding the debt and receive an individualized response on that basis, and plainly falls within the Secretary's authority to adopt requirements necessary to protect the Fund against unreasonable risk of loss.

Comment: One commenter suggested that the scope of the exit interview be expanded further to include information on (1) possible assignment of the notes to the Department, (2) an institution's option to deny deferment when forms are not filed on a timely basis, and (3) the Department's use of IRS Federal refund tax offset.

Response: No change has been made. At the exit interview, the institution must provide the borrower with a copy of the promissory note. The model promissory notes published as Appendices to Part 674 explain that notes may be assigned to the Department, and that the institution may deny a deferment if it is not requested in a timely manner. Because the Federal tax refund offset program is still a pilot program, the Secretary does not believe that the institution should be required to notify the borrower of this collection tool at this time.

Comment: Several commenters suggested deleting Sec. 674.42(b)(2)(iii) which instructs an institution to contact a borrower with a nine-month grace period a third time at 240 days after the commencement of the grace period, because they believed that a third contact during the grace period would not encourage repayments. The commenters believed that a third notice would only serve to confuse a borrower who has begun repayment on a six-month grace period loan.

Several commenters recommended that the regulations require the institution to mail the second grace-period notice 180 days, instead of 150 days, after the commencement of the grace period in order to make the second notice correspond with the end of the grace period on six-month grace period loans and to space the notices on nine-month grace period loans more evenly. In addition, the commenters believed that the requirement to notify the borrower of the total amount to be repaid over the life of the loan in the first contact at 90 days should be deleted because it only repeats information provided the borrower in the exit interview.

Response: No change has been made. The grace period notifications were developed to ensure that the institution regularly communicates with the borrower before repayment is due to begin, in order to maintain contact with the borrower and ensure that the borrower understands his or her rights and responsibilities and therefore begins repayment or applies for appropriate deferment or cancellation benefits in a timely manner. The Secretary does not agree that the borrower should be sent the second grace period notification at the end of the grace period, as the purposes of the notice would not be served.

The spacing of the notifications was also established in order to limit institutional burden. In the case of a borrower with a six-month grace period, the borrower must be contacted twice during the grace period. The first notice, 90 days after the start of the grace period, serves as a useful reminder to the borrower of the responsibilities associated with the loan, including the duty to provide the institution with a current address. The second notice, 150 days into that period, is a second reminder timed to coincide with the billing notice required 30 days before the first payment is due. Sec. 674.43(a).

In the case of a borrower with a nine-month grace period, the borrower must be contacted three times during the grace period: 90 days, 150 days, and 240 days after commencement of the grace period. As with six-month grace period loan, the last notice is timed to coincide with the initial 30 day billing notice. Further, the 150 day notices may be combined for those borrowers who have loans with both six-month and nine-month grace periods. For those borrowers with both a six-month and a nine-month grace period loan, moreover, the institution should be able, in the second (150 day) and third (240 day) contact letters, to explain clearly the difference in repayment obligations on the two kinds of loans and eliminate the confusion hypothesized by the commenter.

Section 674.43 Billing procedures.

Comment: Several commenters opposed deleting the requirement that the institution maintain a list of borrowers with overdue payments, updated monthly. The commenters stated that institutions are required to maintain information on overdue accounts in the general conduct of lending activity.

Response: No change has been made. The Secretary is seeking to reduce regulatory burden where possible, and therefore has deleted the requirement to maintain a list of borrowers with overdue payments. The institution may maintain such a list if it so desires.

Comment: Many commenters objected to changing the current requirement that the institution send a statement of account thirty days and ten days, respectively, before the first payment due date and all subsequent due dates to the proposed thirty-day and fifteen-day notices of the repayment schedule because the change would require complete reprogramming of their entire current billing system.

Response: No change has been made. The thirty-day notice required before the first payment is due is the last notice required in the grace period and repesents no change. Based on his experience, the Secretary concludes that a fifteen-day notice allows the borrower a more adequate response time than the current ten-day notice, and this justifies the initial costs of changing billing systems. Moreover, the institution can avoid this burden by using a coupon payment method.

Comment: Many commenters opposed the proposed rule which would require the institution to send final demand letters by certified mail.

Response: A change has been made. The Secretary concurs with the commenters and has deleted the requirement for use of certified mail for final demand letters.

Comment: Many commenters opposed the requirement that the debtor be given thirty days written advance notice before a defaulted loan is accelerated. These commenters stated that, in their opinion, the borrower would have already been given sufficient time to pay before the loan reached the point of acceleration. They also stated that a thirty-day response time would not convey an urgent need to contact the lender.

Response: No change has been made. Acceleration marks a serious stage of delinquency: after acceleration, cancellation rights lapse, and enforcement action begins. This procedure assures that the date of the acceleration coincides with the deadline for response to the final demand letter, and gives the institution additional flexibility to handle debtors who demonstrate some desire to avoid these consequences. The thirty-day advance notice allows the borrower one last chance to respond with sufficient payments to bring his or her account current, or arrange a satisfactory new repayment agreement with the institution. Moreover, because the institution can promptly send a final demand letter and notice of intent to accelerate to a debtor who has indicated unwillingness to cooperate in the past, Sec. 674.43(d)(1), use of a 30-day warning period before acceleration will not necessarily delay collection action against these debtors.

Comment: One commenter suggested that the regulations specify when and under what conditions an institution may accelerate a loan.

Response: A change has been made. Section 674.31 states that an institution may demand immediate repayment of the entire loan (including any late charges and accrued interest) if the borrower fails to make a scheduled repayment on time or to file for deferment or cancellation on time. Therefore, for clarification, the Secretary has expanded Sec. 674.43(e) to include a reference to Sec. 674.31. The paragraph has also been expanded to provide for a written notice informing the borrower of the acceleration date.

Comment: One commenter urged the Secretary not to require an institution to accelerate a loan where a debtor does not respond satisfactorily to the final demand letter, if acceleration would cause the amount then due to be greater than the jurisdictional limit imposed by a small claims court in which the institution intends to enforce the debt.

Response: The comment presents a good collection tactic, and no change is necessary to permit use of this tactic. The final rule does not require acceleration at any particular point in the institution's collection process.

Comment: Many commenters objected to the proposed requirement of a telephone contact in the billing procedures. The commenters stated that this proposal was contradictory to the intent of reducing cost and burden, and that it merely moves the phone call from the collections to billing cycle. They objected on the basis of cost-effectiveness, citing long distance charges and staff time. One of the commenters stated that billing staff who process routine accounts are not trained to be collection personnel.

Response: No change has been made. Department experience with collecting student loans has proven that telephone contact with the borrower is a highly effective method of collection. The Secretary believes that if this contact is required prior to beginning the more costly collection procedures, the necessity for taking further action may be eliminated.

Comment: Numerous commenters objected to the proposed requirement that the institution deposit funds collected through billing (Sec. 674.43), collection (Sec. 674.45), and litigation procedures (Sec. 674.46) in an insured interest-bearing account. Many of the commenters stated that their institutions were required by the Treasurer of the State to depost all institutional funds to the State Treasuere's account. These funds are then invested by the Treasurer and become part of the State's General Fund. The commenters stated that none of the interest earned on such deposits accrues to the institution.

Response: No change has been made. Neither the statute nor the Perkins Loan regulations prescribe the location of accounts into which Perkins Loan funds are to be deposited, and neither bars their deposit in a State-administered account. Although this comment was apparently prompted by the requirement that institutions deposit funds in interest-generating accounts, it describes a practice which is in direct violation of the specific statutory requirement in 463(a)(2)(E) of the HEA that "any earnings of the funds" be deposited by the institution in the Fund. An institution that participates in the Perkins Loan program has received Federal funds from the Department on the basis of its agreement to administer those funds, loans made from them, collections from those loans, and any earnings on the funds in accordance with the statute and regulations. The institution, therefore, is responsible for depositing these earnings into the Fund, and under current law, without regard to this new regulatory requirement, is liable for any earnings by any party on those funds that are not deposited into the Fund. No provision of State law excuses the institution from responsibility for compliance with the agreement with ED and the statutory requirements it incorporates, and no provision of Federal law exempts such institutions from accountability for earnings not credited to the Fund.

Comment: Several commenters objected to depositing funds into interest-bearing accounts because the institutions rarely have any sizable balance in their Fund. These commenters expressed the concern that if they are required to keep funds in interest-bearing accounts, the banks will charge service fees and require that they keep compensating or minimum balances. At present, many banks do not require institutions to keep compensating balances, nor are they being charged service fees for those accounts.

Response: A change has been made. The Secretary continues to believes that an institution should use the same diligence in maximizing its return for the Fund as it would be expected to use on its own funds, and that this diligence requires constant comparation of charges and interest rates paid by competing financial institutions in order to find those which meet the needs of the Fund at the lowest net cost. However, to defray those costs, the Secretary has revised Sec. 674.8(a)(5) to require the institution to deposit into the Fund only the net earnings on Fund assets in these interest-bearing accounts and to offset bank charges against interest earnings.

Section 674.44 Address searches.

Comment: Many commenters remarked that use of the Department's skip-tracing service to locate borrowers would cause considerable delay and questioned whether institutions had to wait for results before beginning skip-tracing efforts as required in Sec. 674.44(b). One commenter suggested that skip-tracing should be done by either an institution or commercial firm. Other commenters stated that the proposal was, in their view, redundant, overly expensive and largely nonproductive.

Response: No change has been made. There is no cost to the Fund to use the Department's skip-tracing services. The Secretary considers the Department's turnaround time of four to six weeks to be reasonable and effective. Commercial skip-tracing costs are chargeable to the Fund; if a borrower can be located by use of the Department's skip-tracing service, those costs need not be incurred. Therefore, an institution is required to use the Department's free service before proceeding to the steps in Sec. 674.44(b), because use of this free service may spare additional charge to the Fund.

Comment: Several commenters expressed concern that requiring institutions to request an address correction from the U.S. Postal Service would be costly and ineffective. The commenters questioned whether the U.S. Postal Service is prepared to respond to all these requests and help defray the costs.

Response: A change has been made. Proposed paragraph (a)(3) regarding requests for an address correction from the U.S. Postal Service has been deleted. However, an institution is not prohibited from using this practice if the institution determines it to be an effective collection tool.

Comment: Many commenters suggested that reviewing telephone directories should be an institutional option, because small institutions with limited resources would not be able to comply with this proposal. They stated that institutions should be allowed to employ their own procedures. The commenters stated that if the telephone number is unlisted, the operator will not release any information. Directories are often out of date. One commenter suggested that the regulations say "telephone directories or inquiries of information operators * * *." The commenters also suggested that compliance with Sec. 674.44(b) should be an alternative, rather than an addition to, compliance with Sec. 674.44(a).

Response: A change has been made. The Secretary agrees with commenters regarding the need for an institution to retain flexibility to use directories or directory assistance to locate a borrower. Therefore, Sec. 674.44(a)(2) has been changed to allow for institutional discretion. These regulations do not preclude institutions from employing their own procedures; however, Departmental experience with the collection of assigned loans shows that the steps proposed in this section are effective tools for locating the borrower.

Comment: Several commenters suggested that the regulations should state that an address search should begin as soon as the first piece of returned mail is received, and that Sec. 674.44(a) be revised to read as follows: "If mail sent to a borrower is returned undelivered (other than unclaimed certified mail), an institution shall take steps to locate the borrower."

Response: A change has been made. The words "other than unclaimed mail" have been added to clarify the intent of the rule.

Comment: Many commenters opposed the proposal that an institution shall make reasonable attempts to locate the borrower at least twice a year until litigation procedures to collect would be barred under the statute of limitations. Many of these commenters questioned whether institutions would be required to maintain skip-tracing activities after the notes have been assigned to the United States and also if these proposed rules preclude notes from being assigned or written-off until the statute of limitations has expired. Several of these commenters stated that it is not a good practice to tie any collection procedure to the statute of limitations, especially when other sections of the regulations governing this program require that institutions prove due diligence prior to assignment. Two of these commenters suggested the paragraph be rewritten as follows: "The institution shall make reasonable attempts to locate the borrower at least twice a year until the account is written-off or assigned." Response: A change has been made. The Secretary has rewritten, for clarity, the language in proposed Sec. 674.44(d). By assigning a properly-executed note to the Department, an institution relinquishes all rights and responsibilities for the loan, except as otherwise provided in Sec. 674.50. No further address search is required by the institution.

Section 674.45 Collection procedures.

Comment: Several commenters questioned why the regulations require a telephone contact as a part of the billing process rather than as part of the collection procedures. A few commenters opposed theproposal to delete a requirement of telephone contact as part of the collection process because they saw it as a valuable collection tool to personalize the contact and felt it provided a way to determine the proper course of future action.

Response: No change has been made. Institutions are free to continue to make telephone contacts during the collection process; however, because this can be an effective means of restoring a borrower to current repayment status, the Secretary has determined that this personal contact is necessary during the billing process, before the institution begins more costly collection procedures.

Comment: Many commenters were opposed to the requirement to report borrowers to credit bureaus. These commenters suggested that the only time information on a borrower's account should be reported is at the time of legal action or upon assignment of the note to the United States. The commenters felt that this proposal could prove very damaging to the student if information is not accurately reported, or if timely reports are not filed immediately upon payment, subjecting the lending institution to liability for damages. A few commenters stated that paperwork and the regulatory burden would be increased. Several commenters believed that no statute authorizes reporting to credit bureaus, and that the Family Educational Rights and Privacy Act of 1974 (Pub. L. 93-579) might preclude disclosure without a student's written consent. Many commenters opposed the reporting to credit bureaus if the costs are not chargeable to the Fund. Commenters stated that this proposal could be costly to institutions—as much as $555 per year/per institution for membership costs.

Response: No change has been made. The Secretary has interpreted the Family Educational Rights and Privacy Act of 1974 and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus could do so only with the consent of the borrower. The Department's experience with this reporting has demonstrated that it is a relatively inexpensive yet effective collection tool. Moreover, the rule has been revised to clarify that the institution is to assess the cost of reporting the debt to a credit bureau against the debtor as with any other collection costs, and that such costs, if not paid by the debtor, can be charged to the Fund.

Comment: Some commenters questioned whether the term "account status" in Sec. 674.45(b)(2) referred to the amount of the outstanding balance as affected by each payment made, or to the account as either outstanding or paid in full. One commenter stated that there is no legal requirement for monthly updating, and that this practice would be burdensome to the school—especially those with manual operations.

Response: A change has been made. The Secretary has expanded Sec. 674.45(b)(2) to require the institution to report any changes in account status according to the reporting procedures of the credit bureaus to which the institution reported the debt.

Comment: Many commenters opposed the Department's proposal that a collection firm be permitted to retain a defaulted borrower's account for only nine months. The commenters felt that the institution should decide the period allowed the firm to collect the account, and believed that nine months was too short a time. The commenters also felt that this restraint will increase regulatory burden. A few other commenters suggested that each loan should be considered separately, and the Department should not hamper the institution's ability to deal with agencies.

Response: A change has been made. The Secretary has extended this period to 12 months to reduce regulatory burden, but based on the extensive experience of the Department with the use of collection agencies on defaulted loans, the Secretary continues to consider a time limit to be an essential incentive to diligent collection action.

Comment: Several commenters recommended that a second effort not be required when it is the judgment of the institution that litigation is appropriate.

Response: A change has been made. An institution may proceed to litigate to collect an account which it has not been able to recover through a first level collection effort through a collection firm, or through use of its own personnel.

Comment: Many commenters noted that the terminology "significantly more intensive effort" as used in Sec. 674.45(c)(1), is not defined. Many of these commenters said it was confusing and that it should be defined or deleted.

Response: A change has been made. The Secretary agrees with the commenters and has deleted this phrase from Sec. 674.45(c)(1). Section 674.46 Litigation procedures.

Comment: Some commenters expressed concern over the Department's suggestion in the preamble to the proposed rule that institutions pursue litigation by filing a claim in small claims court. These commenters were of the opinion that the filing of a claim in small claims court would be costly and unproductive. Some commenters believed that not all States have small claims courts. A few commenters suggested that the Secretary use the following regulatory language: "use court of appropriate jurisdiction, only when practical for the institution."

Response: No change has been made. When all other efforts fail and the account meets the conditions in Sec. 674.46(a)(1), the institution is required to litigate. The proposed regulations did not require use of any particular kind of court; the use of small claims court is encouraged, but not mandated by regulation.

Comment: Many commenters opposed the proposal to sue the borrower if the outstanding principal and interest on all of the borrower's Perkins Loans held by that institution is more than $200. These commenters felt that it would not be cost-effective to pursue accounts this small, and that the minimum amount should be much higher. The commenters noted that some institutions are required to use State legal services that will not accept for collection accounts with balances under $500; also, the current level of legal fees discourages the pursuit of such small amounts. Other commenters questioned whether it was cost-effective to litigate small accounts as required in the proposed rule, and recommended that the minimum amount of accounts which must be litigated be raised from $200 to $700.

Response: No change has been made. The Secretary continues to believe that the requirement in the proposed rule that institutions litigate those accounts of more than $200 which meet the requirements of Sec. 674.46(a) is a realistic and cost-effective collection criterion. Several factors enter into this analysis of cost-effectiveness. The first of these, although not specifically addressed in the rule, is the deterrent value of an aggressive collection posture demonstrated through predictable resort to litigation. Second, litigation is cost-effective if used only where there is a reasonable prospect that the debtor has assets or earnings sufficient to satisfy a judgment. The proposed rule, like current regulations, requires litigation only in cases in which recovery of the amount owed, including costs, is feasible. Third, litigation is cost-effective to the extent that the costs of litigation are passed along to the borrower sand do not unreasonably negate the value to the Fund of the judgment or unduly tax institutional resources to achieve that judgment.

Litigation costs fall into two categories, for purposes of analysis under the HEA: attorneys fees and collection costs. The latter is not defined is the statute, but logically includes those costs incurred in attempting collection, including court costs such as filing fees, service costs, witness fees, if any, and similar expenses which are not included in the fees charged by attorneys. Regardless of limitations on assessment of such costs under State law, section 484A of the HEA permits the institution to recover these costs, if reasonable, from the debtor. Since these costs are included within the judgment to be taken against a debtor, Sec. 674.46(a) (1)(iii) and (2) require the institution to initiate suit only against a debtor from whom the institution can collect a "major portion" of that judgment debt, including costs. Attorney fees are not commonly understood to fall within the phrase "costs" or "collection costs," and therefore, Federal law does not create a new rule authorizing their recovery, which is usually permitted only where the debtor has agreed to pay them. The Department has included such a provision as an option in the model promissory note published since 1977, and has required litigation on particular categories of accounts since the August 13, 1979 NDSL regulations. Institutions that wished to pass this cost on to the debtor have had ample opportunity to develop promissory notes which included this provision. The Secretary concludes from the Department's program experience that many, if not most, of the institutions participating in the Perkins Loan Program now have these provisions in their notes, and can pass on to the debtor the full cost of attorneys fees incurred to collect the debt. Because the final rule requires the institution to sue only those debtors with resources to satisfy a major portion of judgments which should include the full amount of those very costs which the institution might otherwise have to absorb, for this majority of accounts, litigation of small balance accounts will be cost-effective on those accounts which must be litigated under Sec. 674.46(a) (1) and (2).

The question of cost-effectiveness therefore becomes a real issue only with regard to the collection of those promissory notes which do not authorize the recovery of attorney fees. In those cases, institutions must use either Fund assets or institutional funds, or both, to pay attorney fees. The final rule requires litigation of only those accounts on which the expected cost of litigation, including attorneys fees, does not exceed recovery in the judgment; the minimum amount of such a recovery, under the final rule, is $200. Where attorney fees would exceed recovery in the judgment, litigation is not required; but even where, on small balance accounts, the attorneys fees might consume a substantial part of the recovery, the institution's burden is still quite limited. Under Sec. 674.47(e)(5), the institution may charge against the Fund, attorney fees in an amount up to one-half the judgment, and will therefore be responsible only for fees charged over that limit on these small accounts. The Secretary considers the benefits derived from deterrent effect of litigation sufficient to warrant both the use of the Fund assets for these attorney fees, and the requirement that the institution, where necessary, pay any remainder not chargeable to the Fund. Moreover, as more than one commenter noted, the threat of immediate litigation, when made by counsel, can result in repayments without additional costs, making referral of even these small balance accounts for litigation a cost-effective procedure. Any consideration of the cost-effectiveness of litigating small balance Perkins Loan accounts must recognize that many jurisdictions have small claims courts in which creditors may pursue small balance accounts with or without attorney representations. Many commenters acknowledged extensive and successful use of these courts. The Secretary recognizes that not all jurisdictions have such courts, and that institutions not located in the jurisdiction in which the debtor can be served with process may not be able conveniently and economically to use a small claims court in that jurisdiction. However, the wide availability of this collection tool for many institutions can be reasonably expected to reduce the number of instances in which payment of attorney fees must be made from the Fund or institutional resources.

Comment: Some commenters stated their belief that they would have difficulty securing counsel to litigate small accounts on which the proposed rule would require them to sue.

Response: No change has been made. Lawyers commonly charge for collection litigation on a contingent-fee basis, under which the attorney agrees to be compensated only from amounts received in successful litigation, usually in an amount equal to 30 or 40 percent of the debt received. The Secretary recognizes that an institution may not be able to secure counsel willing to handle a single, or even a few, low balance accounts on a contingent-fee basis at rates similar to those commonly used on larger accounts, but for several reasons does not believe that this warrants changing the rule. First, in those instances in which the institution retains counsel to handle significant numbers of accounts, it should attempt to negotiate a countingent-fee arrangement which commits the law firm to accept referrals of a certain number of small-balance accounts at reasonable fee rates in consideration of the number and size of the other accounts expected to be referred by that institution. Secondly, the rule requires institutions to refer accounts for litigation only where the expected recovery exceeds the costs of litigation. If an institution were unable to secure counsel to litigate a small-balance account under a contingent-fee arrangement, the institution would then determine whether such accounts could be referred on an hourly-rate reimbursement basis. If the institution reasonably determines that the expected cost of litigation, based on estimates of attorney fees on an hourly-rate basis, would exhaust the amount which can be recovered under a judgment, then the institution, under Sec. 674.46(a)(1)(v), is not required to litigate that account. As discussed in an earlier response, this consideration would ordinarily apply mostly to those accounts which are based on notes that do not authorize the assessment of attorney fees against the borrower. Comment: Several commenters suggested thast the reference to referrals in proposed Sec. 674.46(c)(1) should be rewritten as it may be misinterpreted to mean that the Department is reinstating the referral procedures.

Response: No change has been made. As stated in the Preamble, the referral procedure has not been implemented by the Secretary at this time. It remains in the final regulations in Sec. 674.46(d)(2) as an optional activity should the Secretary reinstate it at a later date.

Comment: Two commenters questioned whether proposed Sec. 674.46(c)(2) permitted an institution not to litigate and still assign the note to the United States.

Response: As clarified in Sec. 674.50(a), the final rule requires litigation on an account before assignment in those cases in which litigation would otherwise have been mandated. The institution must follow the procedures set forth in Secs. 674.41 through 674.46 before assignment of the note to the United States.

Comment: Several commenters suggested that Sec. 674.46(a)(1)(iv) concerning suing the borrower when he or she has a known legal defense be deleted. The commenters stated that it would not be cost-effective for an institution to sue in situations where a known legal defense exists.

Response: A change has been made. The Secretary does not require the institution to initiate suit in those cases in which the institution has good reason to believe that the debtor can establish a meritorious legal or factual defense to the obligation. Where the institution determines that a partial defense may be established, the determinations required in this section regarding the cost of litigation compared to recovery must be based on the amount of the enforceable portion of the obligation.

In some instances, the defense identified may be based on facts over which the institution has no control, such as the expiration of the statute of limitations with regard to a debtor whom the institution has been unable to locate, despite recurring and bona fide attempts, until more than six years after the debtor defaulted. (Note: Pursuant to section 484A of the HEA, institutions are now entitled to at least a six-year limitation period within which to bring suit against a Perkins Loan or NDSL defaulter, regardless of any State law which would establish a shorter period; State law may, however, provide for periods greater than six years. This provision assures that at least a Federal minimum applies to all NDSLs and Perkins Loans, including those made before the date on which section 484A was enacted.)

In other cases, the institution may be responsible for the defense available to the borrower; for example, when the other conditions of Sec. 674.46(a) are met, but the period of limitation has run with regard to a loan which the institution has not attempted suit in a timely manner, the Secretary does not require the institution to attempt litigation. However, in such cases, the institution has failed to enforce properly an obligation which it was responsible to collect. The Secretary considers the institution liable for the loss caused to the Fund by that or any other action or omission which bars the institution from securing a judgment for the full amount outstanding on a loan which met the other conditions in Sec. 674.46(a). The institution is similarly liable for losses caused to the Fund by acts or omissions in the past that prevent successful litigation at present; for example, an institution that did not sue a defaulter is liable for the loss to the Fund on that loan if the debtor later leaves the State and cannot be located unless the institution demonstrates that when the debtor was able to be served with process, litigation would not have been successful, and therefore, that it was not then required to litigate the account.

Comment: Two commenters suggested that institutions not sue for small amounts but be allowed to use an offset of Federal income tax refunds by the Internal Revenue Service.

Response: No change has been made. The tax refund offset program is presently authorized only through 1987, and Congress has not yet taken any action to extend this program. In addition, under 31 U.S.C. 3720A, only Federal agencies may refer debts to the IRS for collection by offset; as presently interpreted, the statute permits such referrals only after Perkins Loan notes have been assigned to the United States.

Section 674.47 Costs chargeable to the Fund

Comment: Several commenters requested more clarification on the word "actual" as used in Sec. 674.47(a)(1)(ii). They cite great difficulty in individualizing borrowers' accounts in this process.

Response: A change has been made. As explained in Sec. 674.43(b)(3) and 674.45(e)(2), the institution may assess late charges and collection costs based on either the actual costs of actions taken on the particular account, or on average costs. Therefore, individualized recordkeeping is not necessarily required, but documentation must be retained to support the determination in either case.

Comment: Many commenters were opposed to institutions being limited to charging the Fund an amount not to exceed $25 for each successful address search for a borrower. The commenters believed that instead of an amount being cited in the regulations, the regulations should say "reasonable." A few of these commenters were opposed to using the word "successful" on grounds of not knowing whether an address search would be successful or unsuccessful until the search is completed. These same commentor felt that costs for unsuccessful searches should also be chargeable to the Fund.

Response: A change has been made. Based on comments received, the Secretary has decided that an institution may charge the Fund a "reasonable amount" for each successful address search rather than the proposed $25. It is not the Secretary's intention to mandate the kind of skip-tracing service an institution can employ, or to limit the kind of compensation arrangement reached between the services and the institutions. The institution may limit its costs by using a contingent fee agreement with the contractor.

Comment: A number of commenters opposed the requirement to assess collection costs against the borrower. Many of these commenters recommended that assessment of collection costs be an option of the institution to use as a negotiating tool. Other commenters opposed this rule, citing a possible conflict with the Fair Debt Collection Practices Act (Pub. L. 95-109), State laws prohibiting this practice, potential negative public relations with alumni, and conflicting language in the promissory note.

Response: A change has been made. The Secretary continues to believe that, to the extent possible, the institution should shift the burden of collection costs from the institution and from the taxpayer to the defaulting borrower. However, the Secretary agrees with the commenters' agrument that the ability to waive some or all collection costs is a valuable collection tool, and he has modified the rule to comply with this comment. Under Sec. 674.47(d), the institution may waive collection from the borrower of the same percentage of the accrued collection costs as that percentage of the outstanding balance then due on the account that the debtor repays within thirty days of the date the debtor enters into a repayment agreement with the institution. Thus, if the debtor and the institution reach a written repayment agreement, and the debtor repays one-half of the outstanding principal and interest balance then due on as delinquent or defaulted loan within thirty days of the date of that agreement, the institution may waive the collection of one-half of the collection costs that have accrued on the account through the date of that payment; payment in full can permit a full waiver of collection costs. To the extent that these accrued costs have been waived under this rule, the institution may charge them against the Fund, subject to the limitations otherwise applicable under Sec. 674.47.

The Secretary recognizes that some promissory notes may not include language regarding the assessment of collection costs. As discussed in an earlier comment, the omission of such a provision does not prevent the institution from assessing such costs because the imposition of these costs, unlike attorney fees, is authorized by section 484A of the HEA, as added by section 16033 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), for all loans. The Secretary has revised the language of the suggested promissory note to clarify that the borrower is liable for collection costs.

Although some commenters cited adverse alumni reaction as a reason for not assessing collection costs, it is not at all clear why this factor deserves serious consideration. Whether the alumni approve this collection practice is at this point no longer a controlling consideration; by accepting a fiduciary responsibility over these Perkins Loan funds, the institution bound itself to pursue enforcement of these debts without regard to whether such action may at times impair its own self-interest. Moreover, the rule has been revised to permit waiver of collection costs for those alumni who demonstrate a good-faith effective effort to cure a past default.

As previously noted, section 484A of the HEA authorizes the institution to assess collection costs against the borrower without regard to the provisions of State law. This assessment of collection cost against the borrower does not conflict with requirements of the Fair Debt Collection Practices Act (FDCPA) as suggested by a commenter. Section 808 of the FDCPA prohibits a third-party collecting a debt on behalf of a creditor from collecting any charges or expense incidental to the principal obligation unless expressly authorized by the original agreement or permitted by law. 15 U.S.C. 1692f(1). Because section 484A of the HEA now specifically authorizes assessment of collection costs, a debt collector can attempt to collect them as permitted by law.

Comment: Many commenters opposed the proposal to limit the costs chargeable to the Fund to "successful" collection efforts. The commenters noted that they would not be able to distinguish successful from unsuccessful until after collection efforts were completed, and therefore the same expenses would have been incurred in either case.

Response: A change has been made, but the basic principle has been retained. As noted earlier, where the regulations mandate specific actions with fixed costs, such as telephone contacts (Sec. 674.43(f)), credit bureau reporting (Sec. 674.45(a)(1)), and opposing relief in bankruptcy (Sec. 674.49) on all accounts, Sec. 674.47(a) and (b) permit the institution to charge these costs, if not paid by the debtor, to the Fund without regard to whether they were "successful"; or not. The other costs incurred after the billing cycle, such as costs of address searches (Sec. 674.44(b)), collection action (Secs. 574.45(a)(2) and 674.45(c)(1)(ii)), and litigation (Sec. 674.46) can typically be obtained by the institution on a contingent-fee basis: the institution incurs no cost unless the service is successful. The Secretary therefore considers it reasonable to permit the institution to charge these latter costs to the Fund only when they are successful. Sec. 674.47(e) (1), (3), (4), (5), and (6). If the insititution provides these services in-house or on a non-contingent basis, it need only apportion these costs between successful and unsuccessful attempts in a reasonable and documented manner.

Comment: Many commenters objected to proposed Sec. 674.47(c)(3) which provided that an amount not to exceed 50 percent would be charged against the Fund for second collection efforts. One commenter was of the opinion that 50 percent was excessive and 33 1/3 percent as used in first collection efforts would be more appropriate. Other commenters believed that the establishment of two different percentage rates was counterproductive. They felt that the higher allowance for second efforts would encourage collectors to work less in the first time effort for a higher profit margin in the second. They urged that the 50 percent rate be used for both.

Response: No change has been made. The rule requires the institution generally to use different parties for first and second collection efforts, thereby reducing the possibility of allowing accounts to slip from first to second levels of efforts. The Secretary intends to consider the need for a 50 percent allowance for second effort in the near future, and after further consideration and public comment, may reduce that level.

Comment: Several commenters were opposed to the wording of proposed Sec. 674.47(c)(4), which the commenters stated would have permitted the institution to charge the Fund only for the salary of an institutional employee performing collection functions. These commenters believed that fringe benefits, a portion of office space and equipment, and other related employment costs should also be chargeable against the Fund.

Response: A change has been made. The Secretary's intent was not to exclude cost categories from the expenses that an institution could charge to the Fund if it performed its own collections, but to give an example of permissible charges. An institution may include in the costs to be charged against the borrower, and, if not paid by the borrower, against the Fund, any expense reasonably incurred in carrying out the activities described in Sec. 674.47(b), including both direct and indirect costs properly allocated to these activities.

Comment: Many commenters objected to the limitations on litigation costs that could be charged to the Fund under proposed Sec. 674.47(d)(2). The commenters approved a limitation on such costs, but believed a higher limit than $2,000 or one-third of the amount of any judgment obtained was necessary.

Response: A change has been made. The Secretary believes that a higher limit may be warranted; and has therefore increased the amount of litigation costs that can be charged to the Fund to an amount not to exceed 50 percent of the amount of any judgment obtained. Sec. 674.47(e)(5). This increase is intended to provide institutions a level commensurate with their new burden of litigating smaller balance accounts, and enable them to negotiate referrals of groups of accounts of varying sizes for litigation. The Secretary intends to review the affect of this level on program costs and recoveries, and may propose to reduce that level in the future.

Comment: A number of commenters opposed Sec. 674.47(e) of the proposed rule regarding write-offs. Some commenters felt that $200 was too high and students would not pay the last $200 owed if the rule allowed that amount to be written-off. One commenter asked where any money collected after the write-off procedure would be deposited. A few commenters recommended a smaller write-off figure with no strings attached. Other commenters questioned the value of the write-off procedure if continued collection efforts were required; they recommended deleting these requirements in the proposed rule,

Response: A change has been made. Under Sec. 674.47(g) of this final rule, the amount which may be written off remains at $200 or less. Under the final rule, the institution must exhaust the due diligence procedures prescribed in these rules, which include not only a sequence of contacts immediately after default, but semi-annual attempts to locate "skips," annual dunning contacts, and annual evaluation of accounts for litigation until litigation to collect the account would be barred by the statute of limitations, now six years, unless State law provides a longer period. 20 U.S.C. 1091a(a). The Secretary believes that it is not cost-effective to require collection efforts beyond that point, and write-off is then reasonable for small balances. For larger balances, the institution is urged to consider assignment to the Department for further enforcement action.

Section 674.48 Use of contractors to perform billing and collection or other program activities.

Comment: Many commenters opposed Sec. 674.48(c)(1) of the proposed rule which would require that any billing or collection firm under contract by an institution to collect Perkins Loans be bonded in an amount covering the amount of collections on loans expected to be in its control for a two-month period of time. The commenters stated that most billing firms work in conjunction with financial institutions—with accounts set up in the name of the institution using their services for billing. The commenters believed that it is unnecessary to ask a billing firm to be bonded when it does not handle money nor have signatory powers on the account. Several other commenters questioned why the Department is requiring a bond and at the same time requiring that funds be deposited in an institutional trust account or lock-box.

Several commenters suggested that the bond should be a "performance bond," while other commenters requested guidance as to how an institution would verify the existence of a bond and what types of bonds should be provided. Three commenters stated the bond should cover the amount of all portfolios a firm is handling.

Many commenters opposed the proposed rule as financially burdensome because they would have to get bonding agents to increase the amount of their bonds. Two commenters opposed the bonding proposal if the institution uses a law firm to collect because of the extensive insurance coverage they already maintain to protect their clients.

Response: A change has been made. Section 674.48 has been revised to clarify the requirement that an institution retain only bonded billing services and collection firms to carry out billing and collection procedures. Section 668.15 of the title IV General Provisions regulations requires that an institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the title IV funds it receives as a trustee. A fidelity bond, or similar insurance, indemnifies the holder or beneficiary against losses resulting from the fraud or defalcation of an individual. The Secretary believes that it is reasonable to require the institution to assure the same sort of protection for the Federal and institutional interest from third parties who handle its loan accounts as it is required to provide with regard to its own employees.

The Secretary believes that reasonable people exercising normal prudence in the administration of their financial affairs would require a third party to demonstrate adequate fidelity bond protection before entrusting that party with duties which might permit embezzlement of their funds. Third parties engaged in student loan collection in the past have embezzled funds repaid by borrowers, and there can be no assurance that the firm retained by the institution will continue in business after a misappropriation by its employees, so that the institution could recover for its loss from assets of the firm. Indeed, history suggests that the contrary will be true. An institution which allows a third party to handle its loan accounts without satisfying itself that a financially responsible surety will indemnify it in the event of loss is therefore negligent in the performance of its duties as trustee of the Fund.

A fidelity bond adequately protects the institution only if it provides coverage in an amount sufficient to indemnify the institution for the full amount of any misappropriation of funds belonging to the institution.

To respond to those commenters who believed that collection firms should be permitted to deduct their fees, while at the same time assuring minimum adequate bonding coverage, the Secretary has revised the proposed rule with regard to bonding requirements for third-party collectors to provide two alternative methods of assuring adequate coverage. First, if the institution does not authorize the third party to deduct its fees, but requires it either to deposit payments in an institutional trust account or to direct payments to the institution itself or to a lock-box, Sec. 674.48(f)(2) of the final rule provides that the institution may meet its duty of care if it assures itself that the billing or collection firm is bonded in an amount equal to two months' expected repayments on referred accounts.

Second, the final rule provides that if the third party collector is authorized to receive payments and deduct its fees from the receipts, the institution must more actively undertake to assure the protection. If the amount of expected receipts is very large, over $100,000 over a two-month period, the institution has substantial exposure, and must assure itself that it will not have to compete with other clients for a share of a common bond by ensuring that it is the named beneficiary on a bond or policy in the full amount of those repayments. Section 674.48(f)(3)(ii). If the amount of expected receipts is less than $100,000, the institution must still make a reasonable effort to assure itself that the bond coverage will protect its interest. It can do so by assuring itself that the collector is bonded in an amount ten times larger than the amount of repayments expected to be generated in a two-month period on accounts the institution itself refers to the agent, a multiple designed to provide some protection from the effects of competing claims. Section 674.48(f)(3)(i)(A). The institution should be able to satisfy this requirement with a minimum of investigation. If this multiple, on the other hand, exceeds the amount the collector will be receiving during the two-month period for all its clients, and demonstrates that to the satisfaction of the institution, the final rule provides that a smaller bond is reasonable. Section 674.48(f)(3)(i)(B). It must be emphasized that these particular bonding requirements apply only in those instances in which the institution permits the third party to pay itself out of receipts on the loan accounts, and therefore only apply to contracts with collection firms.

An institution that engages a law firm to perform collection services on its accounts (other than actual collection litigation) must assure itself of this protection in the same manner as with any other third-party, by reviewing the bond or insurance policy to determine whether it protects against misappropriations by employees of the firm. Where a law firm's malpractice insurance also indemnifies for misappropriation of funds by any of the employees of the firm in the course of collection activity, such a policy would provide coverage comparable to that of a fidelity bond.

Comment: A number of commenters opposed the provision in proposed Sec. 674.48 (c)(2) and (d)(4) that would require institutions to use billing services and collection firms that provide monthly statements to institutions to show activities with regard to each borrower. Some commenters stated that the proposed requirements are unnecessarily burdensome due to lack of personnel to review statements, and a costly duplication of effort because institutions already receive information regarding the borrower's status from various other reports. Several commenters suggested that the proposal be dropped due to increased programming costs which the commenters believed would be very high. All of these commenters opposed the requirement that the monthly statements from billing and collection firms should include amounts applied to principal, interest, and late charges. The commenters stated that the requirement is redundant due to the fact that this information is already kept by the institution in its accounting system.

Several commenters stated that collection firms should be required to furnish the information listed in proposed Sec. 674.48(d)(4) of this section, only upon the close and return of the account to the institution. A few commenters suggested that the regulations require quarterly statements which show only payments and commissions charged.

Response: A change has been made. The Secretary agrees with the commenters that some of the information required is available to the institution through various other reports. Therefore, many of the items previously listed in Sec. 674.48 (c)(2) and (d)(4) have been deleted; these provisions now require an institution that uses a billing service or a collection firm to secure from these contractors a quarterly statement instead of a monthly statement as proposed in the NPRM.

Comment: Many commenters objected to Sec. 674.48 (c)(5)(i) and (d)(3)(i) of the proposed rules which gave the institution an option to use billing services and collection firms that instruct the borrower to pay the institution directly. The commenters suggested the requirement be deleted or reworded as follows: "* * * instructs the borrower to make checks payable to the institution, but remit to the service or firm." Several commenters stated that it is a responsibility of a billing service and collection firm to receive payments. The commenters also expressed the concern that this requirement would delay the communicating of account activities and result in inaccurate information.

Response: No change has been made. The institution is primarily responsible for Perkins Loan funds, and the Secretary sees no reason to bar the institution, if it chooses, from receiving payments directly from the borrower. Therefore, this will remain as an institutional option. Sec. 674.48 (c)(4)(i) and (d)(1)(i).

Comment: Many commenters disagreed with proposed Sec. 674.48(d)(3) (ii) and (iii) which would require a collection firm to deposit funds collected from the borrower in a lock-box or institutional trust account. The commenters stated that in most States, collection firms are licensed and bonded, and are required by law to pay clients on a regular monthly basis. The commenters also stated that by State law, funds are supposed to be kept in an agency client trust fund. Several commenters believed that this proposal would require more bookkeeping for the institutions and agencies and establishment of additional bank accounts. Other commenters stated that it would be costly because of monthly box rental fees. Some of these commenters stated that this proposal will not provide any additional protection against unlawful use of loan funds beyond that already provided by bonding requirements.

Response: No change has been made. The Secretary believes that the proposed provisions best satisfy the Secretary's goals of protecting the Federal Government's interest in the title IV funds. It is difficult to see any basis for concluding that loan repayments commingled in a single client trust fund would be protected in the event of either embezzlement or insolvency by the firm as fully as if they had been promptly deposited in an institutional trust account, after deduction of the firm's commissions. Therefore, if an institution chooses not to use a collection firm that instructs the borrower to pay the institution directly, it must employ one that deposits those funds in a lock-box or institutional trust account.

Comment: Many commenters objected to requiring an institution to ensure that a collection firm does not deduct its fees from the amount it receives from the borrower. The commenters suggested that the Secretary allow such a firm to retain its commission before remitting payment to the institution provided that borrowers' accounts are credited. The commenters believed that firms would be forced to extend credit to their clients—creating paperwork and expense. A number of these commenters also noted that attorneys usually deduct their fees from the payment. The commenters suggested that this proposal be deleted and that the institution be allowed to use its discretion in establishing mutual agreements with the collection firms. They believed that this proposal offered no additional protection against abuse. The commenters stated that the additional institutional workload to audit collection firms, to process invoices and payments, and the adversarial relationships between institutions and collection firms which, they felt, would be created by this proposal, would not make this requirement cost-effective.

Response: A change has been made. The Secretary agrees with the commenters that the proposed requirement may not be cost-effective and this provision has been deleted.

Comment: Numerous commenters responded to the Secretary's invitation to comment on whether or not the prohibition against an institution using a commonly owned billing service and collection firm should be revoked. These commenters believed that allowing the use of commonly owned services would present a conflict of interest. The commenters stated that revoking this prohibition would make it more advantageous for a company to pursue an account after default, when the percentage of return would be greater. Some commenters believed that smaller firms collect more aggressively and are more sensitive to institutional needs and that removing the prohibition would enable large firms to underbid them and monopolize the provision of these services, to the ultimate detriment of the institutions and the loan program. Several commenters expressed concern that an environment for misuse would be created and the system of checks and balances would be eliminated. The commenters believed that deleting this requirement would also increase the per-dollar cost of collections, and therefore, they recommended that the regulation not be revoked.

However, a smaller number of commenters responded favorably to revoking the provision that prohibits an institution from using a collection firm and billing service that are commonly owned. These commenters provided the following reasons as to why this provision should be revoked: (1) Allowing institutions to use collection firms and billing services that are commonly owned may improve communications, thus improving the efficiency of the billing/collection process; (2) The prohibition may stifle and prohibit the establishment of consortium agreements which can be an effective means of performing collection efforts; (3) There may be a reduction in operating costs to institutions because it would eliminate the paperwork of sending accounts from billing to collection firms; (4) There would be consistency between the Perkins Loan and Guaranteed Student Loan programs; and (5) Maintaining the regulation may prohibit normal effective operations and restrain trade.

Response: No change has been made. The Secretary appreciates the comments received regarding the provision which prohibits institutions from contracting with commonly owned billing services and collection firms. After considering the comments, the Secretary agrees with the majority of the commenters that the checks and balances which this prohibition provides are necessary to protect the Fund, and therefore does not believe that revoking this prohibition is prudent at this time.

Comment: Several commenters responded to the Secretary's invitation to comment on whether a provision should be added to require an institution that contracts with a single firm or with commonly owned firms to perform both billing and collecting to obtain biennial audits of the Perkins Loan accounts of the firm(s). All of these commenters opposed this provision and stated that audits should only be conducted when and if the school needs them.

Response: The Secretary appreciates the comments and does not include such a provision in the regulation. In view of the bonding requirement for billing services and collection firms, the Secretary no longer believes that the provision regarding biennial audits of these firms is necessary. However, the Secretary considers periodic auditing of the institution's accounts held by a firm to be a desirable practice.

Comment: Several commenters suggested that defaulted amounts should be subject to offset of Federal income tax refunds by the Internal Revenue Service.

Response: No change has been made. The Internal Revenue Service, on behalf of any Federal agency, if authorized by the Spending Reduction Act of 1984 (Pub. L. 98-369, Section 2653, 98 Stat. 1153) to offset Federal income tax refunds of taxpayers who owe debts to the United States. 26 U.S.C. 6402(d). Because loan debts are not regarded as owed to a Federal agency until assigned to the Department of Education, the Secretary has no basis for requesting an offset for such debts against a borrower's Federal income tax refund. Moreover, this authority now extends only to offsets of refunds payable before December 31, 1987.

Section 674.49 Bankruptcy of borrower.

Comment: Several commenters objected to both perceived and real requirements in the proposed rule regarding institutional responsibilities with regard to borrower bankruptcies as being overly burdensome and costly in light of costs of litigation and the expected recovery, and urged that greater reliance be placed on institutional discretion in selection of enforcement actions on such loans.

Response: The regulations require the institution to exercise due diligence in attempting to enforce a loan owed by a borrower who has filed for relief in bankruptcy. Generally speaking, they do not require the institution to do more than it would otherwise be required to do in the context of any other litigation, nor less than the institution is already required to do under bankruptcy law. For example, the regulations require the institution, upon notification of the filing of a bankruptcy petition, to suspend collection action outside the bankruptcy proceeding, and require the institution, at a minimum, to prepare and file a proof of claim, an extremely inexpensive and simple step in the collection process. The regulations, on the other hand, require the institution, as a trustee of the Fund, to consider carefully the various enforcement actions that other prudent creditors would take to protect their claims against a debtor in bankruptcy, and to take those actions which are legally authorized and which are not expected to cost more than the size of the loan and the future recovery from the debtor can justify.

Institutions differ greatly in their experience with loan collection in general and with bankruptcy in particular; institutions likewise differ in their commitment to aggressive loan collection. In light of these differences and the substantial Federal interest at stake in this matter, it is entirely appropriate for the Department to provide in these rules specific guidance and minimum standards for the exercise of due diligence in the context of student loan bankruptcies, rather than leaving the choice of actions to the discretion of each institution.

The Department recognizes that realistic consideration of costs of litigation must be made with regard to each step in the handling of student loan bankruptcies, and the final regulations require the institution to make a reasonable estimate of the cost-effectiveness of an enforcement action with regard to a debtor in bankruptcy before it expends Fund and institutional assets on such litigation.

Comment: Several commenters believed that the proposed rule would require the institution routinely to file a complaint to have a loan in repayment less than five years from the filing of the petition determined to be nondischargeable, and objected that the law does not require this action in order to preserve the enforceability of the loan obligation.

Response: Clearly, the statute places the burden of securing a determination of dischargeability on the debtor for those loans falling under 11 U.S.C. 523(a)(8)(A), and the institution need not initiate the consideration of that issue by filing a complaint to have the loan determined to be nondischargeable. Neither the proposed rule nor the final rule requires the institution to file such a complaint in every case involving a nondischargeable loan. Consistent with the consideration of litigation costs discussed earlier, Sec. 675.47(e)(5) (i) and (ii) permit the institution to charge actual costs to the Fund if it chooses to contest aggressively the discharge of a loan under circumstances in which the Department considers such action likely to prove cost-effective, and a contingent amount in other circumstances. The institution that chooses to file a complaint for a determination of nondischargeability under circumstances described in Sec. 674.49(c) (3), (4), and (5) may charge the actual amount of litigation costs to the Fund. In all other cases, the institution may charge the fund only those costs not to exceed one-third of the amount of any judgment obtained by that action.

Comment: Several commenters objected to the requirement in the proposed rule that an institution include in its pleadings a request for judgment on the amount owed by the debtor in those instances in which the school files a complaint to have a loan obligation determined to be nondischargeable, or opposes a complaint seeking to have the loan held to be dischargeable. The commenters believed that such an action was not appropriate in a bankrupcty proceeding.

Response: No change has been made. Because the bankruptcy court has jurisdiction to adjudicate cases arising in or related to cases under the Bankruptcy Code, the court appears to have the power to issue an order determining the amount owed on a debt included in the bankruptcy proceeding. Moreover, the practical benefits of securing a judgment on the debt in the bankruptcy proceeding are obvious: first, the institution at this time definitely knows the location of the debtor, who either before or after the bankruptcy may be difficult to trace; second, the judgment tolls the running of the statute of limitations on the debt; and third, the action increases the likelihood that the debtor will enter into a reaffirmation agreement regarding the loan obligation, and make such an agreement, which would be incorporated in a consent judgment, more valuable to the institution after the bankruptcy is closed. Therefore, this requirement states what constitutes a good collection practice and has been retained in Sec. 674.49(c)(5)(ii).

Comment: Some commenters believed that the institution should not be required in every Chapter 13 proceeding to seek to have the plan extended to the full five years authorized under the Code, but should be permitted to seek this extension before those courts which appear receptive to such a proposal.

Response: The comment is well taken, and this requirement has been deleted from the final rule; institutions are urged to consider this action on a case by case basis.

Comment: One commenter believed that the regulations were perhaps excessively detailed regarding the institution's responsibilities with regard to claims of undue hardship, but silent on other grounds for excepting loans from discharge, such as borrower misrepresentation of financial status, and suggested that the institution be counseled to consider weighing the cost of attempting to oppose discharge on other grounds against the likely recovery.

Response: The Department recognizes that in most instances the institution will lack the information needed to establish that a loan should be excepted from discharge under the false representations and fraud provisions of 11 U.S.C. 523(a) (2) and (4), and therefore does not require the institution to undertake an investigation that might establish that the loan should not be discharged for such fraud. On the other hand, the institution as a trustee of the Fund has a responsibility to exercise diligence in attempting to collect these loans as assets of the trust, and cannot ignore information it has in its possession that might establish that the student loan debtor obtained the loan by means of false pretenses or a false statement of his or her financial condition. Where the institution has information that shows that the debtor made such false statements, its general fiduciary responsibility for collection litigation requires it to protest the discharge on that ground where there is some likelihood that the debt can be recovered from the debtor. 34 CFR 674.46(a) (1), (2). The costs of such litigation, to the extent not recovered from the debtor, can be charged to the Fund under Sec. 674.47(e)(5)(ii).

Comment: One commenter pointed out that the institution should not be required to oppose a discharge if a Chapter 13 debtor is unable to complete the payments required under the previously approved plan and seeks a discharge under 11 U.S.C. 1328(b), as proposed earlier, because such a discharge, if granted, affects only loans dischargeable under the terms of 11 U.S.C. 523(a)(8). By not opposing such a request, the institution ensures that a debtor who might have been able to discharge his or her obligation without regard to the five-year, undue hardship rule in 523(a)(8) must now meet that test in order to have the loan discharged.

Response: The comment is well taken, and the final rule has been revised to require the institution, rather than opposing a discharge requested under 11 U.S.C. 1328(b), to act only where that action can potentially protest the future enforceability of the loan and is not disproportionately costly. Thus, the institution should monitor the debtor's performance under the Chapter 13 plan, and identify failure by the debtor to make the payments required under that plan. Where the institution finds repeated failures to make required payments, it should anticipate that the debtor will seek a "hardship discharge" under 11 U.S.C. 1328(b). Such a discharge, if granted, will discharge loans which entered repayment more than five years before the filing of the petition. If the institution holds a nondischargeable loan, it need take no action at this point; however, if the institution holds a dischargeable loan, it must then review the cost and likelihood of success of either moving to dismiss the case in order to preempt the expected request for a "hardship discharge," or waiting for, and opposing, that request. The institution must review its own records and pertinent court records to evaluate whether, under applicable provisions of bankruptcy law, the facts in the case support a move to dismiss the case, or an objection to the requested "hardship discharge," and further, whether the amount the institution will spend, with the amounts already spent in litigating this particular bankruptcy, exceed one-third of the amount of the loan debt that will be lost if the discharge is granted. In the case of larger, dischargeable loans and low-divided plans, the Department expects that opposition by the institution will be cost-effective, and in those cases, aggressive opposition by the institution is a necessary element of its due diligence responsibilities.

Section 674.50 Assignment of defaulted notes to the United States.

Comment: Several commenters felt that Sec. 674.50(a)(1) of the proposed rule, which would have required that a note be in default for two years before it could be assigned to the United States, was too restrictive. They stated that institutions should have an option of assigning a note to the United States at any time after due diligence procedures have been performed.

One commenter stated that the provision for assigning notes should be deleted from the regulations because the procedures may be a disincentive for schools to do a good collections job.

Response: A change has been made. The Consolidated Omnibus Budget Reconciliation Act of 1985 eliminated the requirement that a loan must be in default for two years before an institution may assign it to the United States. In accordance with this Act, Sec. 674.50(a)(1), as proposed in the NPRM, has been deleted. An institution may assign a defaulted loan to the United States if that institution has been unable to collect a payment after following the due diligence procedures through a first collection effort, and if litigation is required under these rules, through entry of a judgment. The assignment process is not intended as a disincentive for loan collections, but is available only if a loan cannot be collected after institutional collection efforts have been exhausted.

Comment: Many commenters expressed concern with Sec. 674.50(a)(3) of the proposed rule which permits an institution to assign to the Secretary only those accounts greater than $200. They felt that this may be a problem for two-year institutions and that the minimum amount should be reduced to $100. Some of these commenters stated that they would support this proposal if Sec. 674.47, "Costs chargeable to the Fund," allows institutions to cancel, forgive and cease to pursue accounts valued at $200 or less. Other commenters questioned how the accounting would be handled for accounts of $200 or less. One commenter stated that the account balance to be assigned should be no less than $500. One commenter stated that no dollar minimum should be placed on assigned accounts.

Response: No change has been made. The purpose of the provisions in the statute for assignment to the Secretary is to permit the Federal Government to use its resources to enforce the loan. Based on its experience with its current portfolio the Department considers an account balance of $200 to represent the minimum account size to be handled effectively. The Secretary is including a provision in Sec. 674.47 for the write-off of account balances of $200 or less. Accounts that are written off should be handled according to normal institutional accounting procedures; however, if a payment is made on an account after the account has been written off, the payment must be deposited into the Fund.

Comment: Several commenters stated that the documentation requirements in proposed Sec. 674.50(c) were excessive, particularly for institutions with default rates of 10.0 percent or less, and should be eliminated.

Response: A change has been made. The Secretary has clarified the regulation in Sec. 674.50(c) to state explicitly that all institutions must certify in writing that due diligence required under Subpart C has been exercised on each loan submitted for assignment, but that documentation supporting institutional compliance with all of the due diligence requirements need not be submitted if the institution has a default rate of 7.5 percent or less as of June 30 of the second year preceding the submission period.

Comment: A few commenters stated that the regulations should not require submission of the "original promissory note" as part of the assignment procedure, since originals are sometimes lost in the process of litigation. The commenters proposed that the regulations should state "certified original copy" of the promissory note.

Response: A change has been made. The Secretary concurs with the commenters. The words "or certified copy of the original note," have been added to Sec. 674.50(c)(2).

Comment: One commenter opposed the requirements in proposed Sec. 674.50(c)(5) that copies of all approved requests for deferment and cancellation must be submitted with notes submitted for assignment. The commenter believes that this proposal is neither feasible nor cost-effective.

Response: No change has been made. In collecting assigned loans, the Department frequently encounters disputes about alleged deferments. Adequate documentation regarding all such requests is therefore essential to the Government's collection action in these accounts.

Comment: One commenter stated that proposed Sec. 674.50(c)(7), requiring documentation that the institution has withdrawn the account from any firm that it employed for address search, billing, and collection or litigation services, would be an unnecessary burden on institutions.

Response: No change has been made. In the experience of the Department, a failure by the institution to recall assigned accounts from its collection firms causes confusion for the debtor and the Department and requires a considerable amount of time and effort by the Department to correct. These problems justify imposing on institutions the added step of documenting that they have in fact done what they were required to do upon relinquishing their interest in the note to the United States.

Comment: One commenter stated that a Chapter 7 discharge or a Chapter 13 hardship discharge has no effect on a loan which is within the five-year period, and suggested that proposed Sec. 674.50(d)(1) should clarify that no entry of judgment is required if the loan is expected from discharge under 11 U.S.C. 523(a)(8), and should permit assignment of this kind of loan if litigation would not otherwise be required under these rules.

Response: No change has been made. The rule requires the institution to secure either a judgment and a determination by the bankruptcy court that the loan to be assigned is nondischargeable, or a judgment on the loan obligation after entry of a general discharge order, not merely to secure an interpretation of the effect of a general discharge order on a student loan, but to make enforcement of such loans in the hands of the Government more cost-effective. The purpose of the assignment provisions of the statute is to enable the Department to recover the Federal investment in assigned, defaulted loans.

No reasonable prospect of recovery exists on a loan discharged in bankruptcy, and recovery on loans which are dischargeable on a showing of undue hardship can be expected to involve costs beyond those typically encountered in enforcing other defaulted loans. It is reasonable to expect that borrowers owing a dischargeable loan assigned to the Government will respond to a Federal demand for payment not only by asserting the defenses they might assert on the loan itself, but also by seeking to reopen their bankruptcy proceeding and demonstrate undue hardship. The institution should reasonably be expected to meet those costs under circumstances described in the final rule in order to sustain its own Fund and to establish a credible deterrent to ready recourse by its borrowers to relief in bankruptcy. The Federal Government, which has already supported the institution's collection costs, accepts assignments in order to generate revenues. It is not cost-effective for it to spend the additional time and staff resources needed to deal with these bankruptcy-related challenges in order to recover on this particular category of assigned loans. In order to assure that enforcement of loans included in a previous bankruptcy case will not be disproportionately more costly than collection of other assigned loans, it is reasonable to accept only those loans for which the institution, which currently derives financial benefit from the assignment in the form of a reduced default rate, to secure either a judicial determination of enforceability of the loan from the bankruptcy court, or from another court in which the borrower had the opportunity to assert the defense of a discharge in bankruptcy, but failed to do so.

Comment: A few commenters suggested that proposed Sec. 674.50(d)(2) be amended to permit assignment following unsuccessful efforts by an institution to collect in the courts. The commenters expressed the belief that this proposed provision will discourage institutions from litigating difficult cases.

Response: This provision is now found in Sec. 674.50(e)(2); no other change has been made. For the same reasons that make a judicial determination of enforceability a reasonable condition for assignment of a loan owed by a borrower who has resorted to bankruptcy, a judgment is a reasonable prerequisite for assignment of those loans which should be litigated as an element in the performance of the institution's due diligence responsibilities. The commenter, moreover, has identified precisely those loans on which this requirement is most reasonably imposed. Except with regard to claims of the defense of infancy, to which a variety of rejoinders are almost always available, in this Department's considerable experience in attempting collection on hundreds of thousands of assigned student loans, the cases described in the comment as difficult cases are difficult because of some action or inaction by the institution which the borrower claims to have caused injury and to bar enforcement of the loan obligation. It is difficult for the Government to respond to such charges, since the information needed to sustain or dispute the charges is solely in the hands of the assigning institution, which, for any of a number of reasons, may not provide the information to the Department as needed to rebut effectively the defense and recover on the loan. Not only does the Department typically lack the information needed to respond to borrower defenses, but it is hardly fair for the institution to derive the benefits now available from the assignment while the Department bears the expense and litigative risk in pursuing the borrower on these loans.

Comment: Several commenters believed that proposed Sec. 674.50(f), which would require an institution to indemnify the Fund for any note found to be unenforceable after assignment, was unnecessary and vague and should be eliminated. One commenter believed that the term "indemnify" legally means that some type of insurance must be provided in case the note is not a legally binding instrument, and that the statute does not require an institution to purchase insurance. One commenter believed that State laws which provide that no officer or agency of the State may contract any indebtedness on behalf of the State or assume to bind the State in an amount in excess of the amounts appropriated by the legislature unless expressly authorized by law, prevented compliance with the indemnification requirements in the proposed rule.

Two commenters believed this requirement was unfair unless, in the event that an assigned account is found at a later date to lack needed documentation, the Department were to provide, at the request of an institution, a second review of the loan account and the institution's performance of due diligence before making a final determination.

One commenter questioned the unilateral determination of unenforceability in proposed paragraph (f). The commenter questioned the definition of "legally unenforceable" and asked whether an account is considered to be "legally unenforceable" when the statute of limitations has expired but when the account is still considered by the institution to be a viable obligation which may be collected through such nonjudicial remedies as offset and withholding of services.

Response: No substantive change has been made. The provision that the Secretary may determine, with or without a judicial determination, that an assigned loan is not legally enforceable and that the institution must reimburse the Fund for the amount of the loan he determines to be legally unenforceable, rests on the nature of the institution's responsibilities as a trustee of the loan Fund. By accepting responsibility for the administration of the loan Fund, the institution accepted a fiduciary responsibility with regard to the administration of assets of the Fund, including the duty to make and collect loans from the Fund in a competent manner, and the duty to avoid actions which would undermine or destroy the value of the loan obligations, which obviously constitute the primary asset of the loan Fund. The responsibility of the institution as trustee of Fund assets has long been recognized by the Department, and these particular applications of that responsibility rest on traditionally recognized principles of common law. Moreover, as the grantor of this trust and its residual beneficiary, the Department obviously has the authority and responsibility to identify those instances in which Fund assets have been lost or rendered valueless because of the actions or omissions of the institution, and to demand that the institution reimburse the Fund for the amount of loss caused by that act or omission.

The comments that the use of the term "indemnify" implies that the institution must secure insurance for its actions with regard to the Fund, and that the statute does not authorize the imposition of such a cost, plainly miss this point, as does the comment that an institution need not comply with this provision if it is subject to a State law limiting the authority of a State officer or agency to agree to indemnify another unless funds are appropriated for that purpose. The proposed rule did not require an institution to secure an insurance policy for itself, or to enter into some new indemnification agreement with the Department. The rule merely articulated the responsibility the institution has already assumed by virtue of its existing relationship with the Department with regard to the Fund. To avoid misunderstanding, however, the final rule replaces the words "indemnify the Fund" with the more general terms "reimburse the Fund" to describe the responsibility of the institution.

The comment that "legally enforceable" means enforceable by lawful means, as opposed to merely enforceable by lawsuit, is well-taken, and the Secretary wishes to clarify that to the extent that the Department has collected an assigned loan, particularly by offset against a Federal tax refund, that loan was legally enforceable, whether or not the judicial statute of limitations had expired on the loan. Opportunities for offset by the Secretary are, at this time, quite limited: the statutory authority for tax refund offsets now extends only through December 31, 1987, and the only other prospect for offsets lies with those payments due to debtors who are identified as Federal employees.

As a practical matter, therefore, the term "enforceable," as used in these regulations, now means enforceable by the Secretary by way of lawsuit. Recent amendments to the Act may make this issue as it involves application of the statute of limitations moot for the present: section 484A of the Act, added by Pub. L. 99-272, provides a six-year limitation period, commencing on the date of assignment of the loan to the Secretary, for suits by the United States to enforce assigned loans. 20 U.S.C. 1091a(a)(4)(C). Consistent with case law governing the applicability of statutes of limitation, the Secretary considers this statute to provide the United

States a full six-year period for collection litigation, from the date of assignment, whether or not any period of limitation previously applicable to that account had expired. Because of this provision, therefore, it does not appear likely that the loans assigned in the near future under this regulation will be unenforceable by virtue of the running of a statute of limitations.

As to other defenses, such as misrepresentation or failure of consideration, however, the United States as assignee of the loan enjoys no special protection. Moreover, unlike questions of the running of the period of limitations, which are more typically resolved with a minimum of documentation, the United States is unavoidably and totally dependent on the institution when confronted with defences raised by debtors based on claims of fraud, misrepresentation, and various forms of failure of consideration. Defending against these kinds of charges will require the United States to expend a considerable amount of time and effort in retrieving from the institution documents that may have been lost or discarded and identifying witnesses who may long since have left its employ or had their recollection dimmed by time. The Secretary therefore considers it reasonable to require the institution to reimburse the Fund in those cases in which he determines that allegations of these kinds of defenses are credible and would make successful enforcement of the loan doubtful. The institution will acquire title to the loan note upon making reimbursement to the Fund. If the institution disagrees with the determination that the loan is not enforceable, it may then attempt to secure a judgment on the loan in order to make itself whole for the reimbursement to the Fund.

The Secretary wishes to recover on assigned loans to the greatest extent practical and cost-effective, and has no interest in peremptorily finding a loan to be uneforceable. The Secretary therefore has every reason to permit an institution to supplement its documentation on a previously assigned account where doing so would not jeopardize Federal efforts to enforce the loan. Because it is in the interests of both the Department and the institution to handle this sort of supplementary action on an informal and expedited basis, the Secretary sees no need to prescribe procedures in these rules to govern this transaction.

Comment: Several commenters objected to the proposed Sec. 674.50(g) which would require an institution to consider a loan in default after assignment, if the rule means that after an account is assigned, the institution must still withhold registration, transcripts, or placement services from that debtor. The commenters stated that assignment terminates the institution's title and equity in the loan, leaving no legal basis for taking further action against the borrower. One commenter recommended that if this provision were to be implemented, the Department should indemnify the institution for any suit filed by a borrower against the institution based on collection efforts after assignment. Two commenters asked what effect this paragraph would have on the institution when computing the default rate. One commenter stated that the institution should not be required to classify the borrower in default status for the purposes of reporting, default rate calculation and funding.

Response: A change has been made. The Secretary has amended Sec. 674.50(h) of the final regulation by clarifying that no further financial aid should be awarded to a borrower whose defaulted Perkins Loan(s) have been assigned unless the borrower has made satisfactory arrangements to repay. This is required under section 484(a)(3) of the Act. The institution need take no further action to collect the loan. The institutional default rate will be calculated each year on the basis of information provided in the annual Fiscal Operations Report as of June 30. Notes reported as having been assigned and accepted by the U.S. Government are not included in the institutional default rate.

Comment: Several commenters stated that money collected on assigned notes after the costs of collection have been met should be redistributed to institutions according to the fair share process.

Response: No change has been made. Although section 463(a)(5)(B) of the Act permits the Secretary to reallocate those amounts to institutions, the Secretary does not intend to implement this authority at this time because of the overarching need to reduce the Federal deficit and the continuing high subsidy of Perkins loans.

SUMMARY OF COMMENTS

December 1, 1987 Summary of Comments and Supplementary Information

SUPPLEMENTAL INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the Federal Register of February 27, 1985, 50 FR 8050-8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and §§ 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, § .3 through § .7 of each proposed regulation have been deleted and replaced with new § .3 and § .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the

CWS program and section 413D of the HEA for the SEOG program. In addition, each §.4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and longstanding Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988-89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987-88 award year in accordance with the procedures required for those allocations by Pub. L. 99-500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.110, 676.10 Selection of Students for Loans, Selection of Students for CWS Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988-89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis system that were included as §§ 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations have been deleted. Because Part F of Title IV of the HEA is so specific, the Secretary has not republished those statutory provisions in these regulations. However, § 674.12 provides the Perkins Loan program maximum loan limits and § 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987-88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the Federal Register of January 30, 1987, 52 FR 3091, and the Federal Register of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986-87 award year will continue to apply in the 1987-88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GLS program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: The institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, §§ 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the Perkins Loan Program Regulations—Perkins Loans and Direct Loans

Changes made to Title IV-E of the HEA by the Higher Education Amendments of 1986 included changing the name of the program from the National Direct Student Loan Program to the Perkins Loan program. In addition, section 405(b) of the Higher Education Amendments of 1986 made certain provisions in the Perkins Loan program applicable only to loans made on or after July 1, 1987 to "new" borrowers. The Secretary refers to these loans in the regulations as Perkins loans and has defined a "Perkins loan" as follows:

> A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

Loans made under the Perkins Loan program to other than new borrowers will continue to be known as Direct loans. The Secretary has defined a "Direct loan" as follows:

> A loan made under Title IV-E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

These definitions will be found in 34 CFR Part 668, and are therefore not included in these regulations.

Section 674.2 Definitions

Section 464 of the HEA has been amended to provide a nine-month initial grace period for Perkins loans, and the regulatory definition of grace period has been revised. An initial grace period is a period which immediately precedes the date of first required repayment on a loan. A post-deferment grace period is a period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Section 674.9 Student eligibility.

Section 484(b) of the HEA has been amended to require each undergraduate applicant for a loan under the Perkins Loan program to secure at least a preliminary determination of his or her eligibility for a Pell Grant. Section 674.9 has been amended to include this requirement.

Section 674.10 Selection of students for loans.

Section 463 of the HEA has been amended to require that institutions agree to provide loans on a priority basis to students with exceptional needs.

Section 674.12 Loan maximums.

The maximum cumulative amounts a student may borrow have been increased under revisions to section 464(a) of the HEA and these new limits have been included in § 674.12. The maximum amount an eligible student may borrow is increased to $4,500 for a student who has not completed two academic years of study toward a baccalaureate degree, $9,000 for a student who has completed two academic years of study for a baccalaureate degree but has not received the degree, and $18,000 for study toward a professional or graduate degree, including loans borrowed for undergraduate study.

Section 674.16 Making and disbursing loans.

Section 463A of the HEA has been revised to require disclosure, at the time of disbursement, of the total cumulative balance owed by the borrower to that lender, and an estimate of the projected monthly payment for such a cumulative balance. These requirements have been added to § 674.16.

Section 674.17 Federal interest in allocated funds—transfer of Fund.

The Secretary is considering developing the capability of collecting loans directly in the event that an institution closes or no longer wants to participate in the program.

Section 674.19 Fiscal procedures and records.

The Secretary has expanded this section to clarify the manner in which Perkins Loan funds must be deposited. These funds must be invested in insured or collateralized interest-bearing bank accounts or in low-risk income-producing securities such as obligations issued or guaranteed by the United States, and the institution must exercise the level of care in making these investments required of a fiduciary. Any bank charges incurred from depositing these funds into interest-bearing accounts may be paid from the interest earnings on these funds.

Section 674.31 Promissory note.

Section 464 of the HEA has been revised to provide for a late charge of up to 20 percent of the installment payment for costs incurred during the billing cycle for Title IV-E loans made for periods of enrollment on or after January 1, 1986 and this change has been included in § 674.31.

Section 674.32 Special terms—loans to less than half-time student borrowers.

Section 484(a) revised the limitation that a student must be enrolled on at least a half-time basis to be eligible for Title IV aid, and new § 674.32 incorporates the terms of loans to borrowers who enroll for less than half-time study. The statute has provided a specific grace period before the borrower must begin repayment on Perkins loans so that the borrower may have an opportunity to find or resume employment before bearing the burden of repayment. The Secretary has determined that borrowers who receive loans while enrolled on a less than half-time basis should receive this same benefit, and therefore, the repayment period on a loan to a borrower enrolled on a less than half-time basis begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(a) Nine months from the date the loan was made, or

(b) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a half-time student at an institution of higher education or comparable institution outside the United States approved for this purpose by the Secretary.

Section 674.34 Deferment of repayment—Perkins loans.

Section 464 has been revised to add new deferments for a Perkins loan borrower:

- For a period of up to 3 years during which time the borrower is a member of the National Oceanic and Atmospheric Administration Corps;

- For a period of up to six months while the borrower is on parental leave; and

- For a period of up to 12 months for a borrower who is a mother with preschool age children and is just entering or reentering the work force and is compensated at a rate that does not exceed $1 in excess of the rate prescribed by section 6 of the Fair Labor Standards Act of 1938.

In addition, deferment previously available to a borrower who is unable to secure employment because the borrower is providing care (such as continuous nursing or other similar services) required by a spouse who is disabled was expanded to include provision of care to a disabled "dependent." The final regulation will use the term "dependent" to reflect this revision.

The Higher Education Technical Amendments of 1987 (Pub. L. 100-50, June 3, 1987) authorized a new internship deferment. Under the new provisions, a borrower may defer payment for up to two years while serving in an internship program that leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training. The current GSL regulations, 34 CFR 682.210(g), published in the Federal Register on November 10, 1986, and effective December 24, 1986, provide that a borrower qualifies for an internship deferment only if the internship program requires the borrower to hold at least a bachelor's degree before beginning the program, and is a program that a State licensing agency requires the borrower to complete before it will certify the individual for professional practice or service. 34 CFR 682.210(g)(1)(ii), (iii). Since publication of this regulation, the Department identified certain States that do not require the completion of medical internships as a condition for licensing or certification to practice. Because the regulation limited the internship deferment to borrowers who were serving internships required by State authority, students in these States did not qualify for internship deferments. The Department regards the enactment in June 1987 of this amendatory language in both Perkins and GSLP statutes establishing an additional internship deferment for an individual who is not required to complete an internship program before being eligible to practice as a legislative overruling of this particular limitation in GSLP regulations, and not the other limit in those regulations: Namely, that the program require at least a bachelor's degree as a prerequisite for acceptance into the program. 34 CFR 682.210(g)(1)(ii). Therefore, the Secretary has included the new internship deferment in these regulations, but continues to require that the internship require that the borrower hold at least a bachelor's degree before beginning the internship program.

These additions have been incorporated in §674.34.

The deferment procedures proposed in the NPRM have been revised in order to simplify them and make them consistent with current Department policy regarding the effect of a default on a loan. The proposed rule permitted the institution to regard a borrower who did not make scheduled payments and did not apply for a deferment as in default on the loan, and to accelerate that loan. If the loan was accelerated, the institution could not grant a deferment for any repayments due after the date of acceleration. If the defaulted loan had not been accelerated, the institution could grant a deferment if the borrower repaid the entire past-due amount.

On September 22, 1986 the Department revised its rules regarding the effect of a default on the borrower's ability to qualify for new Title IV aid. 34 CFR 674.2, 51 FR 33726. Under this revised rule, now in effect, a borrower who has failed to make a required payment is in default for purposes of determining both the default rate of the institution and the borrower's status for new aid, unless the borrower executes a new written repayment agreement for that loan. 34 CFR 674.2. The Department intended that institutions have considerable discretion over the terms of the new agreement. In order to encourage institutions to adopt those terms warranted by a borrower's repayment pattern before default, the Department urged institutions to require the defaulter to repay immediately some or all of the past-due amounts on the loan as a term of, or condition for, such a new agreement. It is important, however, that the borrower understands that once a new repayment agreement is executed, and he or she fails to make required payments when due, the loan will immediately revert to default status.

This cure procedure is available, if the institution chooses, even after a loan has been accelerated. It is consistent with that policy to permit the institution to give a deferment to a borrower after his or her loan is in default if the borrower cures the default by executing a new written repayment agreement and meets any conditions set by the institution for the agreement, such as immediate payment of some or all of those installment payments scheduled to be made before the borrower demonstrated to the institution that a condition existed that might qualify him or her for a deferment.

This revision imposes no additional burden on the borrower or the institution beyond that proposed in the NPRM and, in fact, grants greater discretion to the institution. The Secretary intends that this final rule apply to all requests for deferment received by institutions after the effective date of this final rule, regardless of the date on which the loan was made. The Department has always regarded the availability of deferments as a matter of right only upon timely request and timely, satisfactory documentation that the borrower qualified for the deferment; neither the proposed rule nor this final rule represents any change in that policy.

The final rule also clarifies that deferments apply only after the borrower is required to begin repayment; the repayment period begins six or nine months after the borrower ceases half-time enrollment. At times a borrower may neglect to notify the institution that he or she has continued studies and remained at least a half-time student at another institution. Regardless of that failure, the borrower was not required to begin repayment until those later studies were completed. The institution holding the loan may reasonably have concluded that the repayment period on that loan had started, and may have demanded payment from the borrower. Under these circumstances, the borrower may mistakenly characterize his or her request for relief on the grounds of student status as a request for deferment, when it is actually no more than a request that the institution recognize the fact that, because the borrower had not ceased half-time enrollment status, the repayment period had not yet started. The borrower may submit proof at any time, even after a loan has been accelerated, that the repayment period on the loan began at a later date than was originally calculated, and the institution must recalculate that date upon receiving such proof from the borrower. The final rule articulates this long-standing Department interpretation that a borrower whose loan is regarded as in default has the right to the correct calculation of the start of the repayment period. However, the rule also articulates the Department's policy that the borrower remains responsible for payments that would have been due in any event, and that the institution is under no obligation to grant a deferment with regard to those past-due payments, and may immediately enforce its demand for those payments.

Section 674.57 Cancellation for volunteer service—Perkins loans.

The 1986 amendments authorize an institution to cancel up to 70 percent of a borrower's Perkins loan plus the interest on the unpaid balance for service as a volunteer under the Peace Corps Act or the Domestic Volunteer Service Act of 1973. Fifteen percent of the total principal amount of the loan plus interest on the unpaid balance may be cancelled for each of the first and second twelve-month periods of service and 20 percent may be cancelled for each of the third and fourth twelve-month periods of service.

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675, AND 676—General.

Section .2—Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in § .16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of or within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in § 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in § .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy or microforms.

Public Comments and Departmental Responses Relating to Part 674 (Perkins Loan)

Section 674.8—Program Participation Agreement.

Comment: Many commenters objected to the proposal in § 674.8 requiring the institution to restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received if the institution improperly disbursed the loan or failed to exercise due diligence in its collection. The commenters recommended that repayment be required only when a financial loss to the Government occurs and stated that repaying the administrative cost allowance taken on these awards would be administratively burdensome. One of these commenters suggested that a 3% allowable error and omissions rate be allowed. Also, the commenters suggested there is no due process allowed before the institution is required to return the funds.

Response: A change has been made to clarify the intent of the rule. The subject of institutions restoring monies to the Fund has been clarified and moved to § 674.13—Reimbursement to the Fund. The Secretary intends by this rule to require the institution to restore amounts lost to the Fund because of the conduct of the institution or its agents. The relationship of the institution to the Fund has long been characterized by the Department as a trust relationship. This rule applies to that relationship traditional principles governing the responsibility of trustees for losses of trust assets caused by their acts or omissions. As such, the rule codifies existing Department views on the consequences of that responsibility, but does not adopt any new principle or create any new ground of liability.

Under these principles, the institution as trustee is responsible for restoring to the trust those funds used in violation of the directions of the party establishing the trust, the Department. Section 674.13(a)(1) addresses the institution's responsibility with regard to those loans or portions of loans which the borrower was not eligible to receive. These disbursements include overawards caused by a failure to review information available to the institution, such as other aid awarded to the individual in excess of need. See also 34 CFR 674.14(c)(2). The institution is likewise responsible, under this principle, for loans to individuals who were not eligible for a loan if the institution should have discovered that fact by a review of information in its own records, such as records regarding academic progress, repayment status on prior loans held by the institution, and immigration status.

The institution as trustee is also responsible for exercising reasonable care in making loans and due diligence in attempting to enforce the loans. Section 674.13(a)(2) addresses the institution's responsibility with regard to loans that it made in the proper amount to eligible borrowers, but on which it failed to exercise due care in collecting. The revised rule recognizes that for these loans, financial loss to the Fund occurs only in the event of default, and requires the institution to restore to the Fund that full unpaid portion of the loan with regard to which the institution failed to exercise reasonable care in disbursing, recording, or attempting to collect. The institution receives no credit for the institutional share of the uncollectable loan under this provision precisely because it had committed that ICC to the Fund for future lending; the loss to the Fund includes the share of the uncollected loan derived from the ICC, and the institution as trustee is required to compensate the Fund for the loss. For example, the institution is responsible, under this principle, for that portion of a loan evidenced by a promissory note that was altered, unsigned, or lost, or which lacked borrower acknowledgement of all advances of loan funds. If the institution uses a note that incorporates the repayment schedule, the institution likewise makes itself responsible for due care in executing and retaining that schedule.

The rule also regards a failure to comply with the regulatory collection requirements as a cause of the loss to the Fund on an outstanding defaulted loan. Examples of failures to exercise due diligence include any failure to take the following actions in a timely and effective manner: To skip trace promptly, to engage a collection firm, to sue a gainfully employed or otherwise solvent debtor, to report to a credit bureau, or oppose an undue hardship petition in bankruptcy when such opposition is well-grounded and cost-effective.

In some instances, the connection between the institution's conduct and the loss on the loan is fairly clear. For example, the causal connection is reasonably clear where the institution does not sue a gainfully employed debtor whom the institution or its agent had located and whom it could have sued, and the applicable statute of limitations later runs so as to preclude effectively subsequent attempts to collect by lawsuit. Because the failure to sue here is so directly related to the lack of recovery, there is little reason for not holding the institution liable for the loss. On the other hand, a lack of causal connection may be equally clear in other circumstances. For example, if the institution failed to sue a gainfully employed debtor and the statute of limitations ran out on the debt, there is clearly a loss to the Fund. However, if the institution was now able to show that this debtor, at the time suit should have been brought, received a discharge of the loan in a Chapter 13 bankruptcy proceeding which made no provision for any payments on consumer debt, it would thereby demonstrate that the loss to the Fund was clearly caused by the bankruptcy and not its failure to sue. The institution under these circumstances would have no liability to the Fund under § 674.13(b)(1)(ii).

The Secretary recognizes that in many cases, the loss on a defaulted loan can be neither clearly attributed to, nor disassociated from, the failure of the institution to exercise due diligence in collection. For example, if the defaulting borrower moves without providing the institution with his or her forwarding address and the institution does not attempt promptly to trace the borrower, a loss to the Fund has occurred, but there may be several causes for that loss. To solve questions of causation in these unclear cases, the Secretary considers it fair and practical to use a rebuttable presumption that losses that occur on loans not diligently collected were caused by that failure to attempt collection. The institution, and not the Department, had assumed responsibility for using due diligence in collecting the loan, and was and continues to be in a better position to know or discover the actual cause of its inability to collect the loan. The Secretary therefore considers it reasonable to place on the institution the burden of rebutting the conclusion that the loss would not have occurred if the institution had complied with its collection responsibilities under Federal regulations. § 674.13(b)(1)(ii). For example, an institution might show that its failure to begin skip-tracing while the borrower's trail was fresh was not the cause of the loss by demonstrating, through later investigation, that the borrower after his or her move was not gainfully employed during the period in which the institution might have brought suit to enforce the debt.

The presumption created in § 674.13(b)(1), that the loss to the Fund resulted from the act or omission of the institution, may also be rebutted as provided in this section by demonstrating that the loss was ultimately cured completely, by subsequent recovery from the borrower or cosigner, or partially, by securing a judgment for the full amount outstanding on the loan. § 674.13(b)(1)(i)(2). The rule provides that the institution must demonstrate, to the satisfaction of the Secretary, that the loss was not caused by its failure to exercise due diligence. In deciding whether an institution has met that burden of proof in individual cases, the Secretary will take into account the extent to which the institution failed to follow the prescribed due diligence requirements.

If the institution reimburses the Fund under this section, it thereby acquires title to the loan in question in its own name, and not as trustee of the Fund, and may retain for its own account any amount later collected on that loan. The institution must restore to the Fund the outstanding balance of the loan in question, including any portion attributable to the institutional contribution to the Fund.

In response to the comment that this rule denies the institution due process, the Secretary notes that any action taken by the Department to enforce the requirements of § 674.13 will arise as a result of audits or program reviews of the institution, and as such will be subject to an administrative review and an opportunity for a hearing under the provisions of section 487 of the HEA. In addition, the Secretary believes that adoption of a specific percentage of losses as "allowable" is not a prudent step for several reasons. No legal basis is apparent for such a prospective forgiveness of liability, and it appears that such a tolerance might have the effect of lessening collection efforts.

Comment: Many commenters strongly opposed the mandatory inclusion of the word "Federal" in § 674.19(a) for identifying an account in which Federal funds are deposited. The commenters cite added cost and confusion of check printing and disbursements. Commenters from State institutions stated they could not comply with this proposal because of dealing with State Treasuries. In addition, numerous commenters objected strongly to the proposed regulation requiring an institution to keep its NDSL and Perkins loans fund cash in a separate account. Many of these commenters cited the undue administrative burden and the cost of maintaining the account. Other commenters suggested that the requirement of a separate account should be mandated on an individual basis for those institutions that did not maintain acceptable accounting practices.

Response. A change has been made. The Secretary has deleted the requirement that the institution include the name "Federal" in the name of the account. However, this final rule continues to provide that institutions must either notify the bank in writing of the Federal character of the account, or include that phrase in the name of the account. However, to further clarify the nature of the funds on deposit in Title IV program accounts, the Secretary has added language to this section to establish more clearly that character.

First, the rule now articulates what has always been clear under the statute and Department policy: Title IV funds may be used by the institution only for program purposes. See 20 U.S.C. 1094(a)(1). The sum of the Title IV funds on deposit in the institution's accounts must therefore always at least equal the amount of those funds it has received but not yet spent on program purposes. § 674.19(a)(3)(i). By accepting these funds from the Department, moreover, the institution accepts a fiduciary responsibility for these funds; under traditional common law principles, the institution that depletes these accounts containing Title IV funds is deemed to make any subsequent deposits of institutional funds into these accounts with the intention of restoring to the depleted accounts trust funds previously illegally withdrawn. The Secretary recognizes that such restorative deposits are commonly made by institutions with specific intent that the restored funds become Title IV funds, and that such funds be used for disbursement to students. Indeed, the Department has, over the years, directed institutions to satisfy liabilities for misspent funds by depositing in these Title IV accounts the amount of institutional funds that would otherwise have been paid over to the Department to satisfy its claim.

The secretary under this rule places no additional burden on the institution, which was already under a legal obligation to restore improperly withdrawn Title IV funds; rather, the purpose of this rule is to make clear that the Secretary—and the institution—regard these non-Federal funds deposited to depleted Title IV accounts to become part of the Title IV trust funds which the institution holds as fiduciary. These funds therefore become, as part of the trust fund, immune from attachment by third parties to the same extent as the Federal advances they replaced. The Secretary also agrees that only those institutions that do not maintain acceptable accounting practices should be required to maintain funds in a separate Direct/Perkins account. The regulation has been modified accordingly.

Section 674.31—Promissory note.

Comment: Several commenters objected to the provision that the promissory note be limited to either one piece of paper (front and back) or be multiple pages with the borrower's signature on each page. The commenters believed that this is a cumbersome practice that would only increase clerical error and workload. The commenters suggested the use of a multiple page document using the format "page one of five, page two of five, * * *."

Response: A change has been made. The Secretary has added to the final regulations the alternate provision suggested by the commenters allowing a multiple page promissory note, listing the total number of pages in the note as well as the number of each page.

Comment: One commenter encouraged the Department to require co-signers on every Perkins Loan Promissory note as an aid to collection.

Response: No change has been made. Section 464 of the HEA forbids use of an endorser unless the borrower is a minor and the note would not, for that reason, constitute an enforceable obligation under local law. An institution that requires a cosigner, however, must ensure that the obligation of the cosigner or endorser is itself legally enforceable.

Comment: One commenter suggested that a final provision be added to the promissory note section that states that the lending institution should secure the borrower's permission before sending any information about the borrower's account to a credit bureau. The commenter feared that the proposed requirement would violate the general provision in the Family Education Rights and Privacy Act (FERPA).

Response: No change has been made. The Secretary has interpreted 20 U.S.C. 1232g(b)(1)(D), and in particular 34 CFR 99.31(a)(4)(iv), to permit the disclosure of information regarding default on a Perkins (NDSL) loan to credit bureaus. These provisions of FERPA and regulations permit the institution to disclose information contained in the student's educational record without the student's consent if the disclosure is necessary for enforcement of the terms of financial aid which the student has received; reporting the default to a credit bureau is clearly authorized by this authority.

Comment: One commenter suggested changing the language of the sample promissory note that addresses the consequences to the borrower of default and of acceleration of the loan. The commenter suggested that the note should read that the borrower "will lose" deferment or cancellation benefits for service performed after the institution accelerates the loan.

Response: A change has been made. The Secretary has changed the promissory note according to these provisions as adopted in this final rule.

Comment: Three commenters stated that for clarity and simplicity a standard $2 per month penalty charge should be used regardless of the frequency with which the borrower is billed.

Response: A change has been made. Recent statutory changes in the Higher Education Amendments of 1986 have replaced the late charge based on specific dollar charges for each late installment ($1 for the first month, $2 for each month or part of a month thereafter, if repayments are made on a monthly basis, and $3 or $6 for each interval or part thereof for bimonthly or quarterly repayment intervals), with a late charge provision that requires the institution to assess a late payment charge on each late payment, based on the costs of performing activities required in Subpart C of these regulations for the billing cycle (See: § 674.44), as long as the total charges do not exceed 20 percent of the amount of the borrower's monthly, bimonthly, or quarterly payment. Section 674.31(b)(5) of the final regulations has been amended to read accordingly.

Comment: One commenter suggested the elimination of § 674.31(b)(2) which gives the borrower the option of having graduated installments at his or her request. The commenter suggested that the decision to allow graduated installments should be entirely that of the institution.

Response: No change has been made. The Secretary believes that keeping a borrower in repayment status is a more important objective than requiring equal payments. If a borrower requests a graduated repayment schedule, it is indicative that the borrower intends to repay the loan.

Comment: One commenter stated that the timely filing of cancellation and deferment requests should be clearly stated as a borrower responsibility.

Response: A change has been made. The Secretary agrees with the commenter and the note has been changed accordingly.

Comment: One commenter suggested that Perkins loans be reported to credit bureaus and have their status updated on a monthly basis. Another commenter asked if the IRS tax offset provision should be included in the note.

Response: No change has been made. The Secretary has interpreted FERPA and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus may do so only with the consent of the borrower. An institution must report, according to the reporting procedures of the bureau, any changes in account status. The Federal income tax refund offset program is only a pilot program at present, and for that reason it is premature to include notice of this collection tool among routine disclosures.

Comment: One commenter felt that an institution should be allowed to recover all of the costs of collection—either from the NDSL revolving fund or directly from a defaulted borrower. The commenter advocated the deletion of the 25 percent limitation on contingent fee charges by collection firms that may be assessed against the borrower.

Response: A change has been made. In the past, an institution that used a collection firm and intended to pass on to the debtor the cost incurred in paying the collection firm was directed to include in the promissory note a provision specifying that the amount charged the borrower would not exceed 25 percent of the outstanding principal and interest due on the loan. This direction was based on an interpretation by staff of the Federal Trade Commission (FTC) that section 808 of the Fair Debt Collection Practices Act required a specific identification of the type and amount of such charges. The FTC has since revised this position (45 FR

8027, March 7, 1986) and the Department has removed this provision from the model promissory note. Section 484A of the Higher Education Act, added by Pub. L. 99-272, clarifies the consequences of default as subjecting the defaulting borrower to liability for reasonable collection costs, in addition to other charges specified in the law, such as late charges. Final regulations for Subpart C of this part will address this issue of recovery from the debtor of the costs of collection.

Section 674.33—Repayment.

Comment: Several commenters remarked that proposed § 674.32(b) which addressed "minimum repayment rates" was unclear and unnecessarily complex. These commenters felt that institutions should be permitted to use a general pro rata concept when determining how much each account should be repaid. These commenters were also of the opinion that paragraph (b) is inconsistent with the intent of the statute because requiring minimum repayments to be made on one loan while another is deferred deprives the borrower of the benefit of the grace period or deferment prescribed by the statute.

Response: No change has been made. The minimum repayment rates and the deferment provisions are dictated by statute and therefore cannot be changed. See § 674.33(b).

Comment: Three commenters expressed the opinion that notifying the Secretary of all loans that were being extended past the standard ten-year repayment period served no useful purpose. Two commenters suggested that such extensions only be reported on the Fiscal Operations Report and Application to Participate in the campus-based programs (FISAP). One commenter was opposed to granting any extension in the repayment period due to a borrower's low income.

Response: A change has been made. The Secretary agrees with the comment that notifying the Department of all loans that have been extended beyond the ten-year repayment period is an unnecessary institutional burden. The authority to extend the borrower's repayment period remains with the institution.

Section 674.34—Deferment of Repayment—Perkins loans.

674.35—Deferment of Repayment—Direct loans made on or after October 1, 1980.

Comment: There were fifteen comments relative to the internship deferment provision. Two commenters believed the Secretary should not continue to require a bachelor's degree. One commenter stated that the specificity of the proposed provision would be beneficial to the institution in making its decision on a request for deferment. However, all of the other respondents believed that the new requirements were burdensome, time-consuming and of little benefit.

Response: No change has been made. This requirement conforms with all Title IV statutory and program provisions for internships.

Comment: One commenter requested more specificity regarding when a grace period begins and ends. The inquirer felt there was confusion between date-specific or month-specific interpretations.

Response: No change has been made. Section 464 provides that the repayment period begins nine months after the date on which the borrower ceases to be enrolled as at least a half-time student. The grace period is between these two dates. It is determined by specific dates, and cannot be rounded to approximations coinciding with calendar months.

Section 674.37—Deferment Procedures.

Comment: A wide range of comments were received on this section. One respondent was confused by the options available to the institution when a note has not been accelerated. Another commenter questioned if the borrower must pay the amount in default before he or she may be granted a deferment. Another commenter wanted the institution to retain options because it provided leverage needed to collect some loans. Two other commenters believed that this regulation would be unfair to borrowers whose deferments were not processed through no fault of the borrower. They also expressed the concern that the regulation would be a deterrent to accelerating any loans. Four commenters believed that not calculating the interest had little or no significance except to place an additional costly administrative burden on institutions.

Response: A change has been made. Section 674.37 has been re-written to clarify deferment procedures. To qualify for a deferment on a loan, a borrower must submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, and must do so by the date that the institution establishes.

After a loan is in default, the institution may, at its discretion, grant a deferment if the borrower signs and complies with a new repayment agreement on the loan. The institution may do so even after it accelerates the defaulted loan. An institution may in these cases insist that the borrower immediately repay some or all of the amounts previously scheduled to be repaid before the date on which the institution made its determination that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs. Institutions are not required to grant deferments on loans in default; however, if they do so, by securing a new agreement, there is no reason to forego the recovery for the Fund of the accrued interest on that loan. If the institution regards the calculation of past-due, accrued interest as unduly burdensome, it may deny deferments on a defaulted loan.

December 28, 1988 Summary of Comments and Supplemental Informaion

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the Federal Register (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a State, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met—(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, an SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid. Waiver of Notice of Proposed Rulemaking

The Higher Education Amendments of 1986 changed the formulas contained in the HEA, for determining students' EFCs toward their higher education costs for Title IV programs, including the campus-based programs. One change is the requirement that an amount equal to base year income, rather than projected year earnings, be used in determining the EFC. The financial aid community has raised a concern that unless the Department interprets Part F of Title IV of the HEA to require that earnings from non-need-based employment be considered only as part of base year income and not as a resource, these earnings will be "double-counted" by being treated as a resource in the year earned and considered as base year income for the subsequent award year.

The Department had not identified this concern as of the time it published campus-based regulations on December 1, 1987 that continued the Department's former practice of treating non-need-based earnings as a resource. (34 CFR 674.14, 675.14, 676.14.) However, the Department now recognizes that it is necessary to make an interpretative ruling in order to avoid the anomalous consequences identified above, which the Department believes that Congress did not intend. The Department has determined that non-need-based earnings should be treated as part of base year income and not as a resource.

Section 443(b)(4) of the HEA requires that institutions stop funding CWS employment with CWS funds once the CWS recipient has earned more than $200 above his or her need from any employment, whether or not that employment is need-based. The statutory language is silent as to the time period to be considered in making the assessment of whether a student's earnings have exceeded his or her need. The Department is issuing an additional interpretative rule to provide this time element, which is necessary to implement the statute. The Department will consider all earnings earned subsequent to the time that a student's need is met, including both need-based and non-need-based earnings, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is reached. Non-need-based earnings earned prior to the time a student's need is met will not be counted toward meeting the student's need but will instead be used only as part of base year income in the subsequent award year.

As a direct consequence of these interpretative rulings, the Department's monitoring requirements for non-need-based earnings are being eliminated and no adjustments to financial aid packages will be required to be made as a result of such earnings during the award year except with respect to the CWS exception, noted above. Therefore, monitoring of non-need-based employment is not necessary except when an institution continues to fund a student's CWS employment with CWS funds after that student's need has been met. In that circumstance, monitoring will begin when the need has been met and will end when the use of CWS funds is discontinued.

PART 675-COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A-College Work-Study Program

Sec.

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Summary of Comments

Appendix A [Reserved]

Appendix B-Model Off-campus Agreement

Authority: 42 U.S.C. 2571-2756z, unless otherwise noted.

Subpart A-College Work-Study Program

Sec. 675.1 Purpose and identification of common provisions.

(a) The College Work-Study (CWS) Program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751-2756b)

Sec. 675.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year

Award year

Clock hour

Enrolled

Guaranteed Student Loan (GSL) Program

HEA

Income Contingent Loan Program

Pell Grant Program

Perkins Loan Program

PLUS Program

Secretary

SLS Program

Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

*Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*Financial need: The difference between a student's cost of attendance and his or her EFC.

*Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)-as determined by the institution-under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Graduate or professional student: A student who-

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

*Institution of higher education (institution). A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

*Need-based employment: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of Sec. 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

*Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in Sec. 675.16.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who-

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

***Sec. 675.3 Application.**

(a) To participate in the CWS program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the CWS program funds under section 442 of the HEA.

(Authority: 42 U.S.C. 2752)

Sec. 675.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the College Work-Study program in accordance with section 442 of the HEA.

(b) As used in section 442 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(c) Payment to institutions. The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) Authority to expend funds. Except as specifically provided in Sec. 675.18 (c) and (d), an institution shall not use funds allocated or reallocated for an award year-

(1) To meet CWS wage obligations incurred with regard to an award of CWS employment made in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 42 U.S.C. 2752)

Secs. 675.5-675.7 [Reserved]

Sec. 675.8 Program participation agreement.

To participate in the CWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall-

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the CWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work; and

(e) Award CWS employment, to the maximum extent practicable, that will complement and reinforce each recipient's educational program or career goals.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

Sec. 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the CWS program for an award year if the student-

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order-

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752-2753)

Sec. 675.10 Selection of students for CWS employment.

(a) An institution shall make employment under CWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be-

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) If an institution's allocation of CWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall award a reasonable proportion of its allocation of CWS funds to those students.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752-2753)

(Approved by OMB under control number 1840-0535)

Secs. 675.11-675.13 [Reserved]

***Sec. 675.14 Overaward.**

*(a) Overaward prohibited. (1) An institution may only award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the CWS award, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

*(b) Resources. (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) Treatment of resources in excess of need. An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of CWS eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(d)(1) An institution may fund a student's CWS employment with CWS funds only until the amount of the CWS award has been earned or until the student's financial need, as recalculated under paragraph (c)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional CWS funding to a student whose need has been met until that student's cumulative earnings from all employment occurring subsequent to the time his or her financial need has been met exceed $200.

(Authority: 42 U.S.C. 2753(b)(3))

***Sec. 675.15 Coordination with BIA grants.**

(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid-

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: Loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 42 U.S.C. 2753)

Sec. 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's CWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for CWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share or his or her CWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

***Sec. 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see Sec. 675.18(b)) and for certain activities under the Job Location and Development Programs, funds received by an institution under the CWS program are held in trust for the intended student beneficiaries and the Secretary. Funds may not beused or hypothecated (i.e. serve as collateral) for any other purpose.

(Authority: 42 U.S.C. 2751-56)

Sec. 675.18 Use of funds.

(a) General. An institution may use its CWS allocation only for-

(1) Paying the Federal share of CWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Job Location and Development program under Subpart B; and

(4) Transferring a portion of its CWS allocation to its SEOG allocation as described in paragraph (f) of this section.

(b) Administrative cost allowance. (1) An institution participating in the CWS program is entitled to an administrative cost allowance if it provides CWS employment to its students in that award year.

(2) For any award year the amount of the allowance equals-

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (Sec. 675.25), and the amount of loans made under the Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(5)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the community service learning program set forth in Sec. 675.25.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs and to pay the administrative costs of conducting its community service learning program. These latter costs may include the costs of-

(A) Developing mechanisms to assure the academic quality of a student's experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) Carry forward funds. (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year.

(2) Before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year.

(d) Carry back funds. An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) Transfer funds to SEOG. (1) An institution may transfer up to 10 percent of the sum of its initial and supplemental CWS allocations for an award year to its SEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under Sec. 675.19(b).

(4) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

Sec. 675.19 Fiscal procedures and records.

(a) Fiscal procedures. (1) In administering its CWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a separate bank account for CWS funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the account in which those funds are deposited by-

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep CWS funds in a separate bank account.

(b) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that-

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, shall sign the certification. The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

[FR Doc. 88-17933 Filed 8-9-88; 8:45 am]

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see Sec. 675.25(a));

(iv) Are reconciled at least monthly;

(v) Identify each student's account and status;

(vi) Show the eligibility of each student aided under the program; and

(vii) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution must maintain on file all CWS employment applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(c) Retention of records. (1) Records. Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) Period of retention. Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

*(4) Audit questions. An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

(Approved by OMB under control number 1840-0535)

Sec. 675.20 Eligible employers and general conditions and limitation on employment.

(a) Eligible CWS employers. A student may be employed under the CWS program by-

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) Agreement between institution and organization.

(1) If an institution wishes to have its students employed under this part by a Federal, State or local agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement). The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that-

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay-

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) CWS general employment conditions and limitation. (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of-

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not-

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(Authority: 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

Sec. 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies-

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student only in jobs that-

(1) Are on campus;

(2) Furnish student services;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

Sec. 675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) CWS employment in the public interest. The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if-

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves lobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

Sec. 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its CWS allocation and reallocation for an award year to pay the compensation of CWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization-

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization-

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any CWS funds to pay an employee who would otherwise by employed by that organization.

(Authority: 42 U.S.C. 2753)

Sec. 675.24 Establishment of wage rate under CWS.

(a) Wage rates. (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute CWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) Minimum wage rate. The minimum wage rate for a student employee under the CWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

Sec. 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the CWS employment.

(b) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

Sec. 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student employed other than by a for-profit organization may not exceed-

(i) 80 percent for award years 1987-88 and 1988-89, 75 percent for award years 1989-90, and 70 percent for award year 1990-91 and subsequent award years; or

(ii) 90 percent under a community service learning program described in Sec. 675.28 if the amount paid to students under the community service learning program does not exceed 10 percent of the institution's CWS allocation or reallocation for an award year.

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987-88 and 1988-89, 55 percent for award year 1980-90, and 50 percent for award year 1990-91 and subsequent award years.

(3) An institution may not use CWS funds to pay a student after he or she has, in addition to other resources, earned $200 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be-

(1) Used to reduce the Federal share on a dollar-for-

dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if-

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organization; and

(2) The institution at which the student is enrolled-

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR 607), the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR Part 609); and

(ii) Requests that increased Federal share as part of its regular CWS funding application for that year.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

Sec. 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) An institution may not solicit or accept fees, commissions, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(Authority: 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

Sec. 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve or expand services for low-income individuals and families, or to solve particular problems related to the needs of low-income individuals.

(b) A community service learning program is a program of student work that-

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section-

(1) A low-income individual is an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census; and

(2) Community services-

(i) Are direct services, planning or applied research activities, designed to-

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems relating to the needs of low-income individuals; and

(ii) May include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(Authority: 42 U.S.C. 2756a)

Subpart B-Job Location and Development Programs

Sec. 675.31 Purpose.

(a) The purpose of the regular job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(b) The purpose of the community services job location and development program is to locate and develop community services jobs for students qualifying as eligible students under Sec. 675.9.

(Authority: 42 U.S.C. 2756)

Sec. 675.32 Program description.

(a) Regular job location and development program. An institution may expend up to the lesser of $30,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students.

(b) Community services job location and development program. (1) An institution may expend up to the lesser of $20,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions and through consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students qualifying as eligible students under Sec.

675.9.

(2) As used in this subpart, the term "community services" means services that-

(i) Are identified by the institution through formal or informal consultation with local nonprofit, governmental and community-based organizations; and

(ii) Are designed to-

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems related to the needs of the community residents including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756)

Sec. 675.33 Allowable costs.

(a)(1) Allowable and unallowable costs. Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in Sec. 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) Federal share of allowable costs. An institution may use CWS funds, as provided in Sec. 675.32, to pay up to 80 percent of allowable costs.

(c) Institutional share of allowable costs. An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

Sec. 675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.

(a) An institution participating in the CWS program may enter into a written agreement to establish and operate job location programs for its students with-

(1) Other participating institutions; or

(2) A nonprofit organization. The nonprofit organization must have professional direction and staff.

(b) The agreement described in paragraph (a) of this section must-

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions or with a nonprofit organization.

(Authority: 42 U.S.C. 2756)

(Approved by OMB under control number 1840-0535)

Sec. 675.35 Agreement.

(a) A CWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide-

(1) That the institution will administer the programs accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that-

(i) The institution will not use program funds to locate and develop jobs at the institution under the regular job location and development program described in Sec. 675.32(a);

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(Authority: 42 U.S.C. 2756)

(Approved by OMB under control number 1840-0535)

Sec. 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of Sec. 675.19.

(Authority: 42 U.S.C. 2756a)

Sec. 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the CWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred-

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

Appendix A-[Reserved]

Appendix B-Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the College Work-Study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ———, hereinafter known as the "Institution," and ———, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study program [CWS].

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth-

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay, and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employer's payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.) \1\

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the College Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining whether the students meet the eligibility requirements for employment under the College Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

\1\ It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

Compensation of students for work performed on a project under this agreement will be disbursed-and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made-by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll; \2\ and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

SUMMARY OF COMMENTS

December 1, 1987 Summary of Comments and Supplemental Information.

SUPPLEMENTAL INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the Federal Register of February 27, 1985, 50 FR 8050-8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and §§ 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, § .3 through § .7 of each proposed regulation have been deleted and replaced with new § .3 and § .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition, each §.4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and longstanding Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988-89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987-88 award year in accordance with the procedures required for those allocations by Pub. L. 99-500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.110, 676.10
Selection of Students for Loans,
Selection of Students for CWS
Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

\2\ These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

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Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988-89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis system that were included as §§ 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations have been deleted. Because Part F of Title IV of the HEA is so specific, the Secretary has not republished those statutory provisions in these regulations. However, § 674.12 provides the Perkins Loan program maximum loan limits and § 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987-88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the Federal Register of January 30, 1987, 52 FR 3091, and the Federal Register of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986-87 award year will continue to apply in the 1987-88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GLS program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: The institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, §§ 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the CWS and SEOG Program Regulations

Sections 675.20 and 676.20 Maintenance of effort.

The maintenance of effort requirement contained in section 487 of the HEA governing the CWS and SEOG programs was eliminated when the HEA was amended by the Higher Education Amendments of 1986. Therefore, those provisions have been deleted from the regulations for both programs.

Conforming Changes to the CWS Program Regulations

Section 675.21 Institutional employment.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, a proprietary institution may now employ students to work for itself. However, that employment must be "on campus," provide student services, complement and reinforce the educational program or vocational goals of the student to the maximum extent possible, and not involve the solicitation of potential students for enrollment at the proprietary institution.

The Secretary considers that student services may include furnishing academic, library, financial aid, guidance and counseling, health, and social services directly to students. Examples of acceptable employment would include employment as an academic tutor or peer counselor.

Section 675.23 Employment provided by a private for-profit organization.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, each award year an institution may use up to 25 percent of its allocation to pay the Federal share of the compensation earned by its students who are employed under the CWS program by a private for-profit organization. Section 675.23 contains the conditions under which that employment may be provided.

Section 675.26 CWS Federal share limitations.

Starting with the 1989-90 award year, the Federal share of CWS compensation earned by students working for the institution, for a Federal, State, or local public agency, or for a private nonprofit organization under the CWS program will be 75 percent. For award year 1990-91 and subsequent years, the Federal share of that compensation will be 70 percent.

The Secretary will, however, increase the Federal share in each of those years to 100 percent to pay the compensation of students working for other than a private for-profit organization who are enrolled in an institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program, the Strengthening Historically Black Colleges and Universities program, or the Strengthening Historically Black Graduate Institutions program, each of which is authorized by Title III of the HEA.

The Federal share of compensation for students working for a private for-profit organization is 60 percent for award years 1987-88 and 1988-89, 55 percent for award year 1989-90, and 50 percent for award year 1990-91 and subsequent award years. In addition, the non-Federal share must be provided by the private for-profit organization.

Subpart B—Job Location and Development Programs

A second job location and development program was added to the CWS statute. This program authorizes an institution to use the lesser of 10 percent of its allocation or $20,000 to fund a community service job location and development program. Subpart B has been revised to include the statutory requirements governing this new program.

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675, AND 676—General.

Section .2—Definitions—"Undergraduate Student/ Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/ Perkins loans in § .16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of or within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in § 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

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Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in § .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm backups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy or microforms.

Public Comments and Departmental Responses Relating to Part 675 (CWS)

Section 675.8—Program Participation Agreement.

Comment: A few commenters noted that the requirement in § 675.8(c) that the institution make non-CWS institutional jobs reasonably available to the extent of available funds is more restrictive than the statute. The regulation uses the phrase "* * * non-CWS institutional jobs * * *" but the statute states "* * * equivalent employment offered or arranged * * *." These commenters recommended that the regulation be changed to conform with the statute.

Response: A change has been made. The Secretary agrees with the commenters and § 675.8 has been rewritten to conform with the statute.

Section 675.18—Use of funds.

Comment: Two commenters objected to the proposed requirement in § 675.18 that before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year. The commenters stated that the requirement would be administratively burdensome because institutions commingle such funds with current funds and it would be difficult for an institution to demonstrate which funds were used first.

Response: No change has been made. An institution must spend any funds carried forward from the previous year before spending its current year CWS allocation. The Secretary has the authority to reallocate unused current year CWS funds to other institutions. Therefore, to identify accurately the amount of such unused current year funds, it is necessary for institutions to spend first those funds carried forward from the previous year. Further, the Department of Education may not commingle different CWS annual appropriations in its accounting system, by law, therefore these funds must also be reported separately by the institution.

Section 675.19—Fiscal Procedures and Records.

Comment: Many commenters objected to the proposed rule in § 675.19 which would require the institution to maintain a time record in clock time sequences. Most of these commenters cited increased administrative burden on institutions, prohibitive costs (redesigning time-cards, time sheets, and systems), and the difficulty for State-administered institutions to comply due to standardized forms and procedures for State employees. Many of them stated that this method is more prone to error and will lead students to falsify records. Some commenters recommended that this rule may be necessary only for certain institutions where audits have uncovered flagrant abuse of the present method.

One commenter agreed that the proposal was appropriate, but stated that several months would be required to implement it because of the changes necessary in financial aid offices and payroll systems.

Response: A change has been made. In order to complement existing payroll processes, the Secretary has revised the requirement to provide that the certification must contain, or be supported by, time records in clock-time sequence.

Section 675.21 (§ 675.21 in NPRM)—Institutional employment.

Comment: Two commenters suggested that the areas of contracted services for CWS employment in other than proprietary institutions should be expanded. The commenters stated that the wording "such as food, service, cleaning, maintenance or security" makes it unclear as to whether other areas are allowed.

Response: No change has been made. The regulation lists the most common examples of areas of contracted services to which CWS students may be employed.

Comment: One commenter objected to the wording of § 675.21 (d)(2), specifically the statement "The institution may enter into an agreement ONLY with a reliable agency * * *." The commenter suggested the deletion of the word "reliable" because it is judgmental and unnecessary.

Response: A change has been made. The Secretary recognizes the judgmental nature of the word "reliable" and has deleted this word. The reference to the agreement between institutions and organizations has been moved to § 675.20(b) of the final regulations.

Comment: A few commenters supported the rule proposed in § 675.21(d)(4)(ii) that states that the employer may be required to pay such costs as the employer's share of social security or workers' compensation, however, the commenters expressed concern that the regulation does not state when an employer must pay such costs.

Response: No change has been made. In an effort to allow institutional flexibility, the Secretary does not regulate when an employer must pay these costs. The decision as to which entity pays these costs will be contained in the agreement between the institution and the employing agency.

Section 675.23 (Previously 675.24)—CWS Federal share limitations.

Comment: Many commenters objected and expressed concern about the proposal to delete the option which allows an institution to refund excess funds to an off-campus employer when the institution receives more money from the employer than is required to pay the non-Federal share of wages and the administrative costs. The commenters argued that this proposal could jeopardize the willingness of some off-campus employers to participate in the CWS program and to deposit sufficient funds to meet institutional payroll requirements. They also stated that the accounting procedures would be difficult, since the excess funds would have to be carried from one fiscal year to the next.

Response: A change has been made. The Secretary agrees with the commenters and the option will remain in the regulations.

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

December 28, 1988 Summary of Comments and Supplemental Information

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the Federal Register (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a State, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met—(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, an SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

PART 676-SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose and identification of common provisions.

676.2 Definitions.

*676.3 Application.

676.4 Allocation and reallocation.

676.5-676.7 [Reserved]

676.8 Program participation agreement.

676.9 Student eligibility.

676.10 Selection of students for SEOG awards.

676.11-676.13 [Reserved]

676.14 Overaward.

*676.15 Coordination with BIA grants.

676.16 Payment of an SEOG.

676.17 Federal interest in allocated funds.

676.18 Use of funds.

676.19 Fiscal procedures and records.

676.20 Minimum and maximum SEOG awards.

676.21 SEOG Federal share limitations.

Summary of Comments and Responses

Authority: 20 U.S.C. 1070b-1070b-3, unless otherwise noted.

Sec. 676.1 Purpose and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant (SEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 20 U.S.C. 1070b)

Sec. 676.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year

Award year

Clock hour

College Work-Study (CWS) Program

Enrolled

Guaranteed Student Loan (GSL) Program

HEA

Income Contingent Loan Program

Pell Grant Program

Perkins Loan Program

PLUS Program

Secretary

SLS Program

(b) The Secretary defines other terms used in this part as follows:

*Expected family contribution (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*Financial need: The difference between a student's cost of attendance and his or her EFC.

*Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)-as determined by the institution-under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements;

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one.

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

*Institution of higher education (institution): A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

*Need-based employment: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

*Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who-

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

9. Section 676.14 is revised to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

(Authority: 20 U.S.C. 1087aa-1087ii)

*Sec. 676.3 Application.

(a) To participate in the SEOG program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation of reallocation of the SEOG program funds under section 413D of the HEA.

(Authority: 20 U.S.C. 1070b-3)

Sec. 676.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the Supplemental Educational Opportunity Grant program in accordance with section 413D of the HEA.

(b) As used in section 413D of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(c) Payment to institutions. The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) Authority to expend funds. An institution shall not use funds allocated or reallocated for an award year-

(1) To make SEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b-3)

Secs. 676.5-676.7 [Reserved]

Sec. 676.8 Program participation agreement.

To participate in the SEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall-

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b et seq., and 1094)

Sec. 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an SEOG for an award year if the student-

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order-

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b-1, 1070b-2 and 1091)

Sec. 676.10 Selection of students for SEOG awards.

(a)(1) In selecting among eligible students for SEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Pell Grants in that year.

(2) If the institution has SEOG funds remaining after giving SEOG awards to all the Pell Grant recipients at the institution, the institution shall award the remaining SEOG funds to those eligible students with the lowest expected family contributions who will not receive Pell Grants.

(b) If an institution's allocation of SEOG funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of its allocation to those students.

(Authority: 20 U.S.C. 1070b-2)

Sec. 676.11-676.13 [Reserved]

*Sec. 676.14 Overaward.

*(a) Overaward prohibited. (1) An institution may only award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it award SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the SEOG award, and the total resources including SEOG exceed the student's need, the overaward is the amount that exceeds need.

*(b) Resources. (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any-

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) Treatment of resources in excess of need. An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of SEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan

or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) Liability for and recovery of overpayments. (1) A student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the over-awarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

(Authority: 20 U.S.C. 1070b-1)

[FR Doc. 88-29666 Filed 12-27-88; 8:45 am]

***Sec. 676.15 Coordination with BIA grants.**

(a) To determine the amount of an SEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid-

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible a for BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b-1).

Sec. 676.16 Payment of an SEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an SEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{\text{SEOG}}{\text{N}}$$

Where:

SEOG=the total SEOG awarded for an academic year and N=the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may pay SEOG funds to the student for those uneven costs.

(c) The institution may pay the student directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid.

(d)(1) An institution may not pay an SEOG to student for a payment period until the student registers for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may pay a registered student by crediting the student's account is three weeks before the first day of classes of a payment period.

(e)(1) The institution shall return to the SEOG account any funds paid to a student who, before the first day of classes-

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(f) Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG and NDSL program is less than $501.

(g) A correspondence student shall submit his or her first completed lesson before receiving an SEOG payment.

(Authority: 20 U.S.C. 1070b. 1091)

(Approved by OMB under control number 1840-0535)

***Sec. 676.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see Sec. 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(Authority: 20 U.S.C. 1070b-1070b-3)

Sec. 676.18 Use of funds.

(a) General. An institution may use its SEOG allocation and reallocation only for-

(1) Making grants to eligible students;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section; and

(3) Transferring a portion of its SEOG allocation to its CWS allocation as described in paragraph (c) of this section.

(b) Administrative cost allowance. (1) An institution participating in the SEOG program is entitled to an administrative cost allowance for an award year if it awards grants to students in that year.

(2) For any award year, the amount of the allowance equals-

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution may not include, in calculating this allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.25) and the amount of loans made under the Perkins Loan Program that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR 668.

(c) Transfer of funds to CWS. (1) An institution may transfer up to 10 percent of the sum of its SEOG allocation for an award year to its CWS program.

(2) An institution shall use transferred funds according to the requirements of the program to which they were transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under Sec. 676.19.

(4) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(Authority: 20 U.S.C. 1070b et seq., 1095 and 1096)

Sec. 676.19 Fiscal procedures and records.

(a) Fiscal Procedures. (1) In administering its SEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a separate bank account for SEOG funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the accounts in which those funds are deposited by-

(A) Including in the name of the account the fact that Federal funds are desposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep SEOG funds in a separate bank account.

(b) Records and reporting. (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that-

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) The institution shall maintain on file all SEOG applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(4) The institution shall maintain all records supporting its application for funds under this part.

(5) Each year an institution shall submit a Fiscal Operation Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(c) Retention of records.-(1) Records. Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) Period of retention. Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(4) Audit questions. An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

(Approved by OMB under control number 1840-0535)

Sec. 676.20 Minimum and maximum SEOG awards.

(a) An institution may award an SEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, an SEOG may not be awarded for a full academic year that is-

(1) Less than $100, or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable SEOG may be proportionately reduced.

(Authority: 20 U.S.C. 1070, 1070b-1)

Sec. 676.21 SEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section-

(1) For award years 1987-88 and 1988-89, the Federal share of SEOGs awarded to students by an institution equals 100 percent of the amount of the SEOG awards made by that institution;

(2) For award year 1989-90, the Federal share of SEOG awards made by an institution may not exceed 95 percent of the amount of those awards;

(3) For award year 1990-91, the Federal share of SEOG awards made by an institution may not exceed 90 percent of the amount of those awards; and

(4) For award year 1991-1992 and subsequent award years, the Federal share of SEOG awards made by an institution may not exceed 85 percent of the amount of those awards.

(b) Beginning with the 1989-90 award year, the Secretary authorizes, for each award year, a Federal share of 100 percent of the SEOGs awarded to students by an institution that-

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose-

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b-2 and 1069a)

SUMMARY OF COMMENTS

December 1, 1987 Summary of Comments and Supplemental Information

SUPPLEMENTAL INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the Federal Register of February 27, 1985, 50 FR 8050-8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and §§ 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, § .3 through § .7 of each proposed regulation have been deleted and replaced with new § .3 and § .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition, each §.4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and longstanding Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988-89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987-88 award year in accordance with the procedures required for those allocations by Pub. L. 99-500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.110, 676.10
Selection of Students for Loans,
Selection of Students for CWS
Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988-89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis system that were included as §§ 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations have been deleted. Because Part F of Title IV of the HEA is so specific, the Secretary has not republished those statutory provisions in these regulations. However, § 674.12 provides the Perkins Loan program maximum loan limits and § 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987-88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the Federal Register of January 30, 1987, 52 FR 3091, and the Federal Register of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986-87 award year will continue to apply in the 1987-88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GLS program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: The institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, §§ 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the SEOG Program Regulations

Section 676.10 Selection of students for SEOG awards.

In selecting SEOG recipients for any award year an institution must first award grants to those eligible students, including students attending less than half-time, with the lowest expected family contributions in accordance with Part F Title IV of the HEA who are also recipients of a Pell Grant for that year. The institution may then select SEOG recipients who are not recipients of a Pell Grant for that year in priority order of lowest expected family contributions.

Section 676.20 Minimum and maximum SEOG awards.

The maximum grant has been increased to $4,000 and the minimum grant has been reduced to $100.

Section 676.21 SEOG Federal share limitations.

Starting with the 1989-90 award year, the Federal share of SEOG awards an institution makes will be 95 percent of the amount of those grants. For award year 1990-

91, the Federal share will be 90 percent of the amount of those awards and for the 1991-92 and subsequent years, the Federal share will be 85 percent of the amount of those awards.

The Secretary will, however, increase the Federal share of SEOG awards in each of those years to 100 percent for any institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program or the Strengthening Historically Black Colleges and Universities program, each of which is authorized by Title III of the HEA.

Paperwork Reduction Act of 1980

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made as a result of public comments, the Secretary has made certain changes to conform the regulations to changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99-498, and the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the latter changes do not implement substantive policy, but merely incorporate statutory changes made to the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations with regard to these changes is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that would be gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, as discussed in the appendix, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to obtain this information from those agencies or authorities, or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: November 24, 1987.

William J. Bennett,
Secretary of Education

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675, AND 676—General.

Section .2—Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in § .16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of or within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in § 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or at a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in § .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm backups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy or microforms.

December 28, 1988 Summary of Comments & Supplemental Information.

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case

of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the Federal Register (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a State, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met—(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, an SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has determined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

PART 682-GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

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Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

Source: 44 FR 53868, Sept. 17, 1979, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Appendix-Summary of Comments

Subpart A-Purpose and Scope

Source: 51 FR 40888, Nov. 10, 1986, unless otherwise noted.

Sec. 682.100 The Guaranteed Student Loan and PLUS Programs.

(a) This part governs two programs in which lenders use their own funds to make loans to enable students to pay the costs of attending postsecondary schools:

(1) The Guaranteed Student Loan Program (GSLP), which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The PLUS Program, which encourages the making of loans to independent undergraduate students, graduate and professional students, and parents of dependent undergraduate students to help pay for the students' cost of education.

(b)(1) A guarantee agency guarantees lenders against losses due to default by the borrower on GSLP and PLUS Program loans. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the default claims it pays.

(2) The Secretary guarantees lenders against losses, within the GSLP, on Federal Insured Student Loan Program (FISLP) loans and, within the PLUS Program, on Federal PLUS Program loans. The FISLP and the Federal PLUS Program are authorized to operate in States not served by a guarantee agency program. In addition, the FISLP is authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1071 to 1087-2)

Sec. 682.101 Participation in the Guaranteed Student Loan and PLUS Programs.

(a) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools, are eligible to participate as schools enabling an eligible student or parent to obtain a loan to pay for the student's costs of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the GSLP and the PLUS Program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program.

(Authority: 20 U.S.C. 1071 to 1087-2)

Sec. 682.102 Obtaining and repaying a loan.

(a) GSLP application. Generally, to obtain a GSLP loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(b) PLUS Program application. Generally, to obtain a PLUS Program loan, a student completes an application and submits it to the school for certification. If the loan is to be made to the student's parent(s), both the student and the parent(s) complete the application before submitting it to the school. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(c) Repaying a loan. (1) General. Generally, the borrower is obligated to repay the full amount of the loan, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy.

(2) GSLP repayment. Generally, a borrower is not required to make any payments on a GSLP loan during the time the borrower is in school. In most cases the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no payments are required. At the end of the grace period, the repayment period begins. During the repayment period the borrower pays both the principal and the interest accruing on the loan.

(3) PLUS repayment. The Secretary does not pay the interest on a PLUS Program loan on behalf of the borrower. The first payment is due on a PLUS Program loan within 60 days after the loan is disbursed.

(4) Default. If a borrower defaults on a loan, the guarantee agency or the Secretary reimburses the lender for the amount of its loss. The guarantee agency or the Secretary then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087-2)

Sec. 682.103 Applicability of subparts.

(a) Subpart B contains general provisions that are applicable to all GSLP and PLUS Program participants.

(b) Guarantee agency programs are also subject to Subparts C, D, F, G and H.

(c) The FISLP and the Federal PLUS Program are also subject to Subparts C, E, F, G, and H.

(d) Schools are specifically addressed in Subpart F.

(Authority: 20 U.S.C. 1071 to 1087-2)

10. A new Sec. 82.104 is added to read as follows:

Sec. 82.104 Applicability of regulations to the Supplemental Loans for Students Program.

The Supplemental Loans for Students (SLS) program is a continuation of the portion of the predecessor PLUS Program that provided for loans to student borrowers. Accordingly, the provisions of the regulations in this part, Part 600, and Part 668, applicable to loans made to students under the PLUS Program apply to loans made under the SLS Program, except where inconsistent with the Act.

(Authority: 20 U.S.C. 1078-1, 1082)

Subpart B-General Provisions

Source: 51 FR 40889, Nov. 10, 1986, unless otherwise noted.

Sec. 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year

Campus-based Programs

Clock hour

College Work-Study Program

Dependent student

Enrolled

Guaranteed Student Loan Program

Independent student

Institution of higher education

National Direct Student Loan Program

Pell Grant Program

PLUS Program

Secretary

State

State Student Incentive Grant Program

Supplemental Educational Opportunity Grant Program

Vocational school

(b) The following definitions also apply to this part:

Act: Title IV, Part B of the Higher Education Act of 1965, as amended, 20 U.S.C. 1071, et seq.

Actual interest rate: The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that a lender may charge under the Act on a loan.

Borrower: A student or parent to whom a GSLP or PLUS Program loan is made.

Co-maker: One of two individuals who are joint borrowers on a PLUS Program loan and who are equally liable for repayment of the loan.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for-

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser: A signer of a promissory note who is secondarily liable for a loan obligation.

Escrow agent: A guarantee agency that receives the proceeds of a GSLP loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrowers.

Estimated cost of attendance: (1) Except as provided in paragraph (2) of this definition, the tuition and fees applicable to a student, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may include, but are not limited to: reasonable transportation and commuting costs; costs for room, board, books, and supplies; the insurance premium for the loan; and, if applicable, the origination fee for the loan. These expenses may not include the purchase of a motor vehicle.

(2) For a student enrolled in a correspondence study program, only the contract price of the program, the insurance premium for the loan, and, if applicable, the origination fee for the loan. However, other costs described in paragraph (1) of this definition incurred by the student in fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

Estimated financial assistance: The estimated amount

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of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from Federal, State, institutional or other scholarship, grant, work, or loan programs, including but not limited to-

(1) Any Social Security benefits paid to, or on account of, the student that would not be paid if he or she were not a student;

(2) Veterans' educational benefits paid under Chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(3) Educational benefits paid under Chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(4) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of title 10 and Chapter 2 of title 37 of the United States Code;

(5) The estimated amount of other Federal student financial aid, including but not limited to Pell Grants and campus-based aid, which the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(6) GSLP and PLUS loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

Foreign school: A school not located in a State.

Full-time student: (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period: The period that begins on the day on which a GSLP borrower ceases to be enrolled as at least a half-time student (or a full-time student, if so required by the applicable guarantee agency) at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student: A student who-

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Guarantee agency: A State or private nonprofit organization that has an agreement with the Secretary to administer a loan guarantee program under the Act.

Half-time student: A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP or PLUS Program loan.

Legal guardian: An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender: (1) The term "eligible lender" is defined in section 435(g) of the Act.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union-

(i) The term "subject to examination and supervision" means "subject to examination and supervision in its capacity as a lender;" and

(ii) The term "does not have as its primary consumer credit function the making or holding of loans made to students under this part" means-

(A) Does not, in any calendar year, make or purchase GSLP or PLUS Program loans that total more than one-half of its consumer credit loan dollar volume for that year, including home mortgages; and

(B) Does not, at any time, hold GSLP or PLUS Program loans that total more than one-half of its consumer credit loan portfolio, including home mortgages.

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(g)(1)(E) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(g) of the Act.

National credit bureau: A credit reporting agency with a service area that encompasses more than a single state or region of the country.

National of the United States: (1) A citizen of the United States; or

(2) As defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if, for example-

(1) A school determines who will receive a loan and the amount of the loan; or

(2) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Origination fee: A fee which a lender is allowed to charge a GSLP borrower under section 438 of the Act.

Parent: A student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under Sec. 682.600.

Post-deferment grace period: For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the day following the last day of an authorized deferment period.

School: (1) An educational institution that is-

(i) An institution of higher education or a vocational school, as those terms are defined in 34 CFR Part 668; or

(ii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSLP and the PLUS Program.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(3) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS Program is not eligible to participate in those programs. For this purpose-

(i) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) "Promote the availability" means providing prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP or PLUS Program loan. This term does not include providing general financial aid information to prospective or enrolled students.

School lender: A school, other than a correspondence school, that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender: In any State, a single State agency or private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Totally and permanently disabled: The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

Undergraduate student: A student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length and is designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141)

Sec. 682.201 Eligible borrowers.

(a) Student borrower. A student is eligible to receive a GSLP loan, and an independent undergraduate student or a graduate or professional student is eligible to receive a PLUS Program loan, if the student-

(1) Is enrolled or accepted for enrollment on at least a half-time basis at a participating school, and meets the requirements of paragraph (c) of this section;

(2) Provides his or her social security number;

(3) Authorizes the school in writing to pay directly to the lender that portion of any refund of school charges that is allocable to the loan, in accordance with 34 CFR Part 668;

(4) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(5) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section;

(6) Complies with the requirements pertaining to registration with the Selective Service, set forth in 34 CFR Part 668;

(7) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in Sec. 682.203; and

(8) In the case of an undergraduate student who seeks a GSLP loan for the cost of attendance at a school that participates in the Pell Grant Program, receives a preliminary or final determination from the school of the student's eligibility or ineligibility for a Pell Grant.

(b) Parent borrower. A parent is eligible to receive a PLUS Program loan if the parent-

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets all of the qualifications set forth in paragraphs (a) (1) through (6) of this section;

(2) Provides his or her social security number;

(3) Meets the qualifications pertaining to citizenship and residency status set forth in paragraph (d) of this section;

(4) Meets the qualifications concerning defaults and overpayments set forth in paragraphs (e) and (f) of this section; and

(5) Complies with the requirements for submission of a Statement of Educational Purpose set forth in Sec. 682.203.

(c) Enrollment status. To be eligible as a student or a borrower under the GSLP or the PLUS Program, a student must-

(1) If currently enrolled, be maintaining satisfactory progress, as determined by the school;

(2) If enrolled or accepted for enrollment in a foreign school, be a national of the United States; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education, meet the additional requirements set forth in paragraph (g) of this section.

(d) Citizenship and residency status. Each borrower, and each student for whom a parent is borrowing, must be-

(1) A national of the United States;

(2) A permanent resident of the United States and must provide evidence from the Immigration and Naturalization Service of that status;

(3) In the United States for other than a temporary purpose and must provide evidence from the Immigration and Naturalization Service of intent to become a citizen or permanent resident;

(4) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; or

(5) A citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(e) Effect of default on eligibility. (1) Except as provided in paragraph (e)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is in default on any loan made under any title IV student financial assistance program identified in 34 CFR Part 668. For loans made under the National Direct Student Loan Program, the term "default" is defined in 34 CFR Part 674.

(2) If a borrower, or a student for whom a parent is borrowing, is in default, as set forth in paragraph (e)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is in default has made satisfactory arrangements with the holder of the loan to repay the defaulted loan.

(3) The school may rely on the borrower's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(4) The Secretary does not consider either a loan that is discharged in bankruptcy or a defaulted loan that is paid-in-full after default to be in default for purposes of this section.

(f) Effect of overpayment of a grant on eligibility. (1) Except as provided in paragraph (f)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is liable for an overpayment on any grant made under any Title IV student assistance program identified in 34 CFR Part 668.

(2) If the borrower, or the student for whom a parent is borrowing, is liable for an overpayment on a grant, as set forth in paragraph (f)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is liable for the overpayment meets the following conditions:

(i) Overpayment of a Pell Grant. If the borrower, or the student for whom a parent is borrowing, has been overpaid on a Pell Grant, the borrower may still be eligible under the GSLP or PLUS Program if-

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) The overpayment can be eliminated in the award year (as defined in 34 CFR Part 690) in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(ii) Overpayment of a Pell Grant due to a school error. If the borrower, or the student for whom a parent is borrowing, has been overpaid as a result of a school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, the borrower may still be eligible under the GSLP or PLUS Program if-

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) The person who received the overpayment acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it within six months from the date of the acknowledgment.

(iii) Overpayment on a Supplemental Educational Opportunity Grant. If the borrower, or the student for whom a parent is borrowing, is overpaid on a Supplemental Educational Opportunity Grant, the borrower may still be eligible under the GSLP or PLUS Program if-

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year (as defined in 34 CFR Part 676) in which it occurred.

(g) Additional eligibility requirements for a student attending flight school. To be eligible as a student or a borrower under the GSLP or the PLUS Program for enrollment in a flight school program at a vocational school or an institution of higher education, a student must-

(1) Plan to pursue or be pursuing a full-time program leading to commercial flight ratings;

(2) Have completed ground school training or be taking it concurrently with flight training;

(3) Hold a private pilot's certificate or have sufficient flight hours to qualify for that certificate; and

(4) Hold at least a Class II medical certificate.

(Authority: 20 U.S.C. 1077, 1078, 1082, 1085, 1091)

Sec. 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest. (1) Applicable interest rates under the GSLP:

(i) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on a previous GSLP loan is-

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983; or

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983.

(ii) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous GSLP loan, is the applicable interest rate on the previous loan.

(2) Applicable interest rates under the PLUS Program: (i) The applicable interest rate on a PLUS Program loan is-

(A) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(B) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(C) Twelve percent for a loan made on or after November 1, 1982.

(3) Under both the GSLP and the PLUS Program a lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1) or (a)(2) of this section.

(b) Capitalization. (1) Under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance if so authorized by the guarantee agency. This increase in the principal balance of a loan is called "capitalization." A guarantee agency's policy, with respect to capitalization, may not permit capitalization that is not permitted under paragraphs (b)(2) and (b)(3) of this section.

(2) Under the FISLP and the Federal PLUS Program, a lender may capitalize interest that has accrued-

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note;

(ii) During a period of authorized deferment;

(iii) During a period of forbearance, as permitted under Sec. 682.211; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(i) through (iii) of this section no more frequently than once a year, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal actually begins.

(c) Origination fee for a GSLP loan. Under the GSLP a lender-

(1) May charge a borrower an origination fee not to exceed the maximum rate specified by Federal statute;

(2) May deduct the origination fee from the proceeds of the loan;

(3) Shall, in the case of a loan disbursed in multiple installments, deduct a pro rata portion of the fee from each disbursement;

(4) Shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof by a credit against the borrower's loan balance if-

(i) The loan check is returned uncashed to the lender;

(ii) The loan is repaid in full within 120 days of disbursement;

(iii) The loan check has not been cashed within 120 days of disbursement; or

(iv) The loan proceeds disbursed by electronic funds transfer in accordance with Sec. 682.207(b)(ii)(B) have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) Insurance premium. The insurance premium is a charge made by the guarantee agency or the Secretary to the lender, incident to the guarantee the lender receives against default by the borrower. If the insurance premium is provided for in a borrower's promissory note, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor.

(e) Late charges. (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower-

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; and

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(f) Collection charges. (1) If provided for in the borrower's promissory note, the lender may require that the borrower pay costs incurred by the lender or its agent in collecting installments not paid when due, including, but not limited to-

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Long distance telephone calls.

(2) The costs referred to in paragraph (f)(1) of this section may not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1079, 1082, 1087-1)

Sec. 682.203 Statement of Educational Purpose.

No loan may be made under this part until the borrower submits to the lender a written Statement of Educational Purpose, on a form approved by the Secretary, certifying that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending.

(Authority: 20 U.S.C. 1082, 1091)

Sec. 682.204 Maximum loan amounts.

(a) GSLP annual limits. The total amount a student may borrow in any academic year of study under the GSLP, including the FISLP, may not exceed-

(1) $2,500 in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student, but not more than the lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who-

(i) Is enrolled in the first academic year of undergraduate study; and

(ii) Was not previously enrolled in an undergraduate program; or

(2) $5,000 in the case of a graduate or professional student.

(b) GSLP aggregate limits. The aggregate guaranteed unpaid principal amount of all GSLP loans made to a student may not exceed-

(1) $12,500, in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student; or

(2) $25,000, in the case of any graduate or professional student, including loans for undergraduate study.

(c) PLUS Program annual limits. The total principal amount of all PLUS Program loans made to, or for the benefit of, an eligible student for any academic year of study may not exceed-

(1) $2,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $3,000, in the case of a graduate or professional student; or

(3) $3,000, in the case of a parent borrower.

(d) PLUS Program aggregate limits. The aggregate guaranteed unpaid principal amount of all PLUS Program loans made to or for the benefit of an eligible student may not exceed-

(1) $12,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $15,000, in the case of a graduate or professional student; or

(3) $15,000, in the case of a parent borrower.

(Authority: 20 U.S.C. 1075, 1078, 1078-1, 1078-2, 1079, 1082, 1089)

Sec. 682.205 Disclosure requirements.

(a) A lender shall disclose the following information to a borrower either before or at the time of the first disbursement on the loan:

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The principal amount of the loan;

(3) The amount of any charges, including the origination fee and the insurance premium, collected by the lender at the time of or before disbursement of the loan, and an indication of whether those charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) The actual interest rate;

(5) The annual and aggregate maximum amounts that may be borrowed;

(6) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a credit bureau or a credit reporting agency;

(7) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(8) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(9) An explanation of any special options the borrower

may have for consolidating or refinancing the loan;

(10) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(11) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(12) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2141, note;

(13) The definition of "default" found in Sec. 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation and a statement that the default will be reported to a credit bureau or a credit reporting agency;

(14) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance;

(15) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(16) In the case of a GSLP or student PLUS loan, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower.

(b) The lender shall also disclose the information listed in this paragraph in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of a FISLP loan. Should the borrower enter the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period. The lender shall disclose-

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The scheduled date upon which the repayment period is to begin;

(3) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(4) The actual interest rate on the loan;

(5) An explanation of any fees which may accrue or be charged to the borrower during the repayment period;

(6) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(7) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(8) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(c) The lender shall provide the information required to be disclosed by paragraphs (a) and (b) of this section at no cost to the borrower.

(Authority: 20 U.S.C. 1078-2, 1082, 1083a)

(Approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.206 Due diligence in making a loan.

(a) General. (1) The loan-making process includes processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her responsibilities under the loan, completing and having the borrower sign the promissory note, and disbursing the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions to a school unless the school has an origination relationship with the lender. If that relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender that does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school that are contained in the application.

Except as provided in Part 668, Subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) Processing forms. Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before all information requested from the borrower on that form has been supplied.

(c) Approval of borrower and determination of loan amount. (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may determine the borrower's eligibility based on the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought.

(2) In determining the amount of the loan to be made, within the limitations of Sec. 682.204, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance, less estimated financial assistance, for the academic period for which the loan is intended.

(d) Promissory note. (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) A lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor without the guarantor's prior approval.

(3) The lender shall give the borrower a copy of each

executed note.

(e) Security, endorsement, and co-makers. (1) A FISLP or Federal PLUS Program loan shall be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(f) Loan disbursement. A lender shall disburse funds as required by Sec. 682.207.

(Authority: 20 U.S.C. 1077, 1078-2, 1079, 1080, 1082, 1083, 1085)

Sec. 682.207 Due diligence in disbursing a loan.

(a) (1) This section prescribes procedures for lenders to follow in disbursing GSLP and PLUS Program loans. With respect to FISLP and Federal PLUS Program loans, references to the "guarantee agency" in this section mean the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (iv) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to Sec. 682.408. The lender must comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender-

(i) May not disburse a loan prior to the issuance of the guarantee commitment for the loan by the guarantee agency, except with the agency's prior approval;

(ii) Shall disburse loan proceeds by-

(A) A check that is made payable to the borrower, or, if required by the guarantor, is made co-payable to the borrower and the school identified on the loan application, and requires the personal endorsement or other written approval of the borrower in order to be cashed; or

(B) If authorized by the guarantor, electronic funds transfer to an account of the student's school that requires the written approval of the borrower for the release of funds from the account; and

(iii) Shall not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and in no case, without the Secretary's prior approval, earlier than 30 days prior to the date on which the student is scheduled to enroll; and

(iv) Shall disburse-

(A) Directly to the school, in the case of a student borrower; or

(B) Directly to the borrower, in the case of a parent borrowing on behalf of an eligible student, and shall notify the school of the amount of the loan within 30 days of the date on which the first disbursement on the loan is made.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or approve the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else.

(c) (1) Multiple disbursement requirements: A lender shall disburse GSLP and PLUS Program loans made to student borrowers in multiple installments if-

(i) The amount of the loan is $1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, one semester, two quarters, or 600 clock hours.

(2) Multiple disbursement procedures: In multiply disbursing a loan, a lender shall disburse as follows:

(i) Disbursement must be in two or more installments.

(ii) No installment may exceed one-half of the loan.

(iii) At least one-third of the period of enrollment for which the loan is made must elapse before the second installment is disbursed.

(3) For purposes of this paragraph, a lender shall consider all loans made for the same period of enrollment as a single loan.

(d) (1) Under certain circumstances, a lender, with the prior approval of the guarantee agency, may disburse after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment.

(2) A guarantee agency may approve a lender's request to disburse under these circumstances only if the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis.

(3) If the lender, after receiving the guarantee agency's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082, 1083, 1085)

Sec. 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to credit bureau organizations, responding to borrower inquiries, and establishing the terms of repayment.

(b) For any GSLP or PLUS Program loan, a lender shall promptly report to at least one credit bureau-

(1) The date of disbursement and the amount of the loan;

(2) Information concerning the collection of the loan, including the repayment status of the loan; and

(3) The date the loan is fully repaid by, or on behalf of, the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(c) (1) A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser on a loan.

(2) When a lender learns that a GSLP borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d)(1) A lender shall follow the procedures in Sec. 682.412 whenever it learns that the borrower, or, if applicable, the student on whose behalf a parent has borrowed-

(i) Did not qualify for all or a portion of a loan made under this part; or

(ii) Has received a GSLP loan subject to payment of Federal interest benefits as provided under Sec. 682.301, but is in fact ineligible for some or all of those interest benefits.

(2) For purposes of Sec. 682.412(f), the term "guarantee agency" means the Secretary in the case of a FISLP or Federal PLUS Program loan.

Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082, 1085)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.209 Repayment of loans.

(a) Conversion of a loan to repayment status. (1) For a PLUS Program loan, the repayment period begins on the day the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) Except as provided in paragraphs (a) (3) and (4) of this section, for a GSLP loan the repayment period begins-

(i) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve consecutive months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISLP, and by the guarantee agency for loans guaranteed by the agency; and

(ii) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six consecutive months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(3) For a borrower of a GSLP loan who is a correspondence student, the grace period specified in paragraph (a)(2) of this section begins on the earliest of the date-

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in Sec. 682.602. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for submission of a particular assignment if the student states in writing, within the 60-day period, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program in the schedule required under Sec. 682.602.

(4) For a GSLP loan, the repayment period begins prior to the end of the grace period, if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower may not further utilize the grace period.

(5) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(6) (i) Subject to paragraphs (a)(6) (ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a loan, calculated from the beginning of the repayment period. Except in the case of a FISLP loan made for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a GSLP loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in Sec. 682.210 or Sec. 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10- and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) Prior to the beginning of the repayment period the borrower may request and be granted by the lender a repayment period of less than five years. At any time, subject to paragraph (a)(6)(iii) of this section, and without the lender's consent, the borrower may subsequently have the total repayment period extended to a minimum of five years.

(b) Prepayment. The borrower may prepay the whole or any part of a loan at any time without penalty. Unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(c) Minimum annual payment. (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's GSLP or PLUS Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSLP or PLUS Program loans, their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the 10- or 15-year maximum repayment periods unless forbearance, as described in Sec. 682.211, has been approved.

(d) Supplemental repayment schedule. (1) In the case of a loan made by a school lender, the lender and the borrower may agree on a supplemental repayment schedule, with the prior approval of the Secretary, that would supplement the regular repayment schedule described in paragraph (a)(5) of this section.

(2) The supplemental repayment schedule may be based on other than equal or graduated payments. For example, the supplemental repayment schedule may base the amount of the borrower's payment on the borrower's income.

(3) The borrower may not insist upon the establishment of a supplemental repayment schedule. The lender may not insist upon the establishment of a supplemental repayment schedule unless the lender obtained the borrower's written consent to enter into one at the time the loan was made.

(e) Treatment by lenders of borrower's refunds received from schools. (1) A lender shall treat a payment of a borrower's refund received by the lender from a school as a credit against the amount owed by the borrower on the borrower's loan.

(2) (i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, the lender shall promptly transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (e)(2)(i) of this section, the holder of the loan shall promptly provide written notice to the borrower that the holder has received the refund.

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1082, 1085)

Sec. 682.210 Deferment.

(a) Borrower eligibility. (1) Except in the case of a loan received by a parent borrower under the PLUS Program on or after August 15, 1983, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period.

(2) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installment payments of principal deferred during the six-month period (post-deferment grace period) that commences after the completion of each deferment period or combination of those periods.

(3) Interest accrues and is paid by the borrower during the deferment period, and the post-deferment grace period, if applicable, unless, in the case of a GSLP loan, the loan was determined to be eligible for interest benefits under Sec. 682.301 when the loan was made.

(4) In order to receive a deferment, the borrower must request the deferment and provide the lender with all documentation required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to a deferment first exists, but not more than-

(i) Sixty days before the date the lender receives the request and documentation required under paragraph (a)(4) of this section for an unemployment deferment; and

(ii) Six months before the date the lender receives the request and documentation required under paragraph (a)(4) of this section for all other deferments.

(6) An authorized deferment period ends on the earlier of-

(i) The date the condition establishing the borrower's eligibility for the deferment ends; or

(ii) The date when the condition entitling the borrower to a deferment has continued to exist for the maximum amount of the time allowed for a specific deferment.

(7) A lender may not deny a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the deferment and, if applicable, post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(b) Authorized deferments. Deferment is authorized during periods when a borrower is engaged in-

(1) (i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school;

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section;

(3) Up to three years of active duty status in the United States Armed Forces or service as an officer in the Commissioned Corps of the United States Public Health Service;

(4) Up to three years of service under the Peace Corps Act (if the borrower has agreed to serve for a term of at least one year);

(5) Up to three years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs) (if the borrower has agreed to serve for a term of at least one year);

(6) Up to three years of full-time volunteer service, which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section, for a tax-exempt organization, as described in paragraph (d) of this section;

(7) Conscientiously seeking, but unable to find, full-time employment in the United States over a single period of up to 12 months, as described in paragraph (e) of this section;

(8) Pursuing a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section;

(9) Up to two years of service as an intern, as described in paragraph (g) of this section; or

(10) Up to three years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because the borrower is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) Graduate fellowship deferment. To qualify for a deferment for study in a graduate fellowship program, a borrower must provide the lender with a statement from an official of the borrower's fellowship program certifying that-

(1) The fellowship program-

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the fellow's progress; and

(2) The borrower-

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, which may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) Full-time volunteer service for a tax-exempt organization deferment. To qualify for a deferment for full-time volunteer service for a tax-exempt organization, comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower must provide the lender with a statement from an official of the borrower's volunteer program certifying that-

(1) The borrower serves in an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation (including a subsistence allowance) does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e) Unemployment deferment. (1) To qualify for an unemployment deferment, a borrower must provide the lender with a written request for the deferment. To continue the deferment for more than three months, the borrower must provide an additional request before the end of each three-month period. Each request must be signed by the borrower and dated, and must contain-

(i) A statement from the borrower describing the borrower's conscientious search for full-time employment, including for at least three attempts to secure employment during that three-month period-

(A) The name of the firm contacted;

(B) The name of the person contacted; and

(C) The firm's address and phone number.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address;

(iii) Certification from the borrower that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address and the date of registration therewith; and

(iv) The borrower's agreement to notify the lender promptly when full-time employment is obtained.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(4) An unemployment deferment is not justified if the borrower refuses to seek employment in kinds of positions or at salary and responsibility levels for which the borrower feels

overly qualified by virtue of education or previous experience.

(f) Rehabilitation training program deferment. To qualify for a rehabilitation training deferment, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals, and must provide the lender with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program-

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by-

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Veterans Administration; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that-

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purposes of this paragraph, full-time employment involves at least 30 hours of work per week.

(g) Internship deferment. (1) An eligible internship program is a supervised training program that-

(i) Is required in order for the borrower to begin professional practice or service, e.g., medical residency;

(ii) Requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(iii) A State licensing agency requires completion of before certifying the individual for professional practice or service.

(2) To qualify for an internship deferment, the borrower must provide to the lender the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (g)(2) of this section.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying-

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(h) Temporary total disability deferment. (1) To qualify for a temporary total disability deferment, a borrower must give the lender a certification, from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, has become unable to attend school or to work and earn money during a period of at least 60 days needed to recover from the injury or illness.

(3) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application so as to render the borrower temporarily totally disabled.

(i) Spouse's temporary total disability deferment. (1) To qualify for a deferment given to a borrower whose spouse is temporarily totally disabled, a borrower must give the lender-

(i) A certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, that the borrower's spouse is temporarily totally disabled; and

(ii) A certification from the borrower that the borrower is unable to secure employment because the borrower is providing nursing or similar services to the borrower's spouse that the spouse requires due to the injury or illness.

(2) For the purposes of this section, a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, has become unable to work and earn money during a period of at least 60 days needed to recover from the injury or illness, and who, during that special period, requires nursing or similar services.

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.211 Forbearance.

(a) (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraph (b) of this section whenever-

(i) Poor health or other personal problems affect the ability of the borrower to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under Sec. 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under Sec. 682.301.

(3) If two borrowers are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only when the ability of both borrowers to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in Sec. 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year maximum repayment periods if the lender and borrower agree in writing to the new terms, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10- and 15-year maximum repayment periods if-

(1) The lender reasonably believes that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note, and the lender states the basis for its belief in writing and maintains that statement in its loan file on that borrower;

(2) Both the borrower and an authorized official of the lender agree in writing to the forbearance; and

(3) Where the forbearance involves the postponement of all payments, the lender contacts the borrower at least once every three months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(d) The lender shall maintain evidence in the borrower's loan file that the forbearance has been agreed to by both the lender and the borrower.

(Authority: 20 U.S.C. 1078, 1078-2, 1080, 1082)

(Reporting and recordkeeping requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to-

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or a particular category of students or their parents.

(b) The following are examples of transactions which, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made-

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or a lender, with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with the lender, may not pledge a loan made under the GSLP or PLUS Program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently prescribed special allowance under Sec. 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school or lender which would be a party to the proscribed transactions.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans a warranty that-

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans, where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan guaranteed under the GSLP or PLUS Program shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1082, 1097)

Sec. 682.213 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(Authority: 20 U.S.C. 1082)

Subpart C-Federal Payments of Interest and Special Allowance

Source: 51 FR 40899, Nov. 10, 1986, unless otherwise noted.

Sec. 682.300 Payment of interest benefits on a GSLP loan.

(a) General. The Secretary pays a lender a portion of the interest on a GSLP loan on behalf of a borrower who qualifies under Sec. 682.301. This payment is known as interest benefits.

(b) Covered interest. (1) The Secretary pays interest benefits on an eligible GSLP loan for interest accruing-

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earlier of-

(i) The date the borrower's loan is repaid;

(ii) The date the loan check is returned uncashed to the lender;

(iii) The 120th day after the date of disbursement, if the loan check has not been cashed on or before that date, or if the loan proceeds disbursed by electronic funds transfer in accordance with Sec. 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iv) The date of default by the borrower;

(v) The date the borrower's loan is discharged by a bankruptcy court;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.413(a) sets forth the circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) Interest not covered. Interest benefits do not cover-

(1) Interest on interest added to principal, except for interest capitalized in accordance with Sec. 682.202(b);

(2) Interest for which the borrower is not otherwise liable; or

(3) Interest paid on behalf of the borrower by a guarantee agency.

(d) Rate. (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender the actual interest rate on the outstanding principal balance of an eligible GSLP loan, provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

Sec. 682.301 Eligibility of borrowers for interest benefits on GSLP loans.

(a) General. (1) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her GSLP loan.

(2) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrates financial need for the loan.

(i) If the student demonstrates financial need for a loan of less than $500, or of more than $1,000, the student qualifies for interest benefits for the loan amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1000, the student qualifies for interest benefits on a loan of up to $1,000.

(b) Application for interest benefits. To apply for interest benefits, the student shall submit to the lender his or her loan application. The application must include a certification from the student's institution of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student

for the academic period for which the loan is intended.

(3) The adjusted gross family income of the student's family.

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000.

(5) The amount of the student's need for a loan as determined by the institution pursuant to paragraph (e) of this section.

(c) Adjusted gross family income. (1) The institution shall determine the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(2) As used in this section, "adjusted gross family income of the student's family" means "adjusted gross income," as defined in section 62 of the Internal Revenue Code, as reported on the 1985 Federal income tax return(s) of-

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father, unless the school determines that, at the time the student applies for the loan, the student is an "independent student."

(3) A dependent student whose parents are divorced or separated shall comply with the following procedures for reporting a parent's adjusted gross income to determine the adjusted gross family income:

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If paragraph (c)(3)(i) of this section does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(iii) If neither paragraph (c)(3)(i) nor (c)(3)(ii) of this section applies, include only the income of the parent who provided the greater support for the period commencing January 1, 1985, and ending 12 months prior to the date of application.

(4) If one of the parents has died, a dependent student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income for those parents even if the parent(s) had income.

(5) The following rule applies if either a parent whose income is taken into account under paragraph (c)(3) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(4) of this section, has remarried. The income of that parent's spouse is included in determining the adjusted gross family income if, in 1985 or 1986, the dependent student-

(i) Has received or will receive financial assistance of more than $750 from that spouse; or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(6) The income of the student's spouse is not included in determining the adjusted gross family income for a student who is divorced or separated, or whose spouse has died.

(d) Independent student. As used in this section, "independent student" means a student who meets the criteria in 34 CFR 668.1a. All other students are considered to be dependent students.

(e) Determination of need. (1) If the student's adjusted gross family income exceeds $30,000, the institution shall determine the student's need for a loan by subtracting from the student's "estimated cost of attendance," as defined in Sec. 682.200, his or her-

(i) "Estimated financial assistance," as defined in Sec. 682.200; and

(ii) Expected family contribution, as determined under paragraph (f) of this section.

(2) The student shall certify the accuracy of any information he or she provides to the institution that is necessary to determine need.

(3) The Secretary may require that family members whose incomes are included in the student's adjusted gross family income under paragraph (c) of this section provide copies of the relevant Federal income tax return(s) and other pertinent documents to support the student's application for interest benefits.

(f) Determination of expected family contribution. For a student who seeks a loan for a period of instruction beginning on or after July 1, 1986, but not later than June 30, 1987, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1986-87 (July 1, 1986-June 30, 1987) under the National Direct Student Loan (NDSL), College Work-Study (CWS), or Supplemental Educational Opportunity Grant (SEOG) program at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the NDSL, CWS or SEOG program.

(2) If the student has not been awarded financial assistance under the campus-based programs for award year 1986-87 at the time he or she applies for a GSLP loan, the student's expected family contribution must be determined under either-

(i) A need analysis system approved by the Secretary for the academic year for which the loan is sought for the campus-based programs; or

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family, after taking the provisions of paragraph (g) of this section into account, is more than $30,000 and less than $75,000.

(g) In calculating a student's expected family contribution under paragraph (f) of this section-

(1) The institution shall exclude any taxable and

nontaxable income realized from the proceeds of a sale of farm or business assets if-

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses a need analysis system approved by the Secretary for the campus-based programs to calculate the student's expected family contribution; and

(2) The institution shall exclude any taxable income realized from the proceeds of a sale of farm or business assets if-

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses the tables set forth in Appendix B to calculate the student's expected family contribution.

(Authority: 20 U.S.C. 1078, 1082, 1089)

(Appproved by the Office of Management and Budget under control number 1840-0110)

Sec. 682.302 Payments of special allowance on a GSLP or PLUS Program loan.

(a) General. The Secretary pays a special allowance to a lender on an eligible GSLP or PLUS Program loan. The special allowance is a percentage of the average unpaid principal balance, including interest capitalized in accordance with Sec. 682.202(b), computed in accordance with paragraph (c) of this section.

(b) Eligible loans. All GSLP and PLUS loans otherwise meeting program requirements are eligible for special allowance payments, except for GSLP loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under Sec. 682.301.

(c) Rate. (1) Except as provided in paragraphs (c) (2) and (3) of this section, the special allowance rate for an eligible loan during a three-month period is calculated by-

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding three and one-half percent to the resulting percentage;

(iv) For a loan made prior to October 1, 1981, rounding the result upward to the nearest one-eighth of one percent; and

(v) Dividing the resulting percentage by four.

(2) In the case of an eligible loan subject to the requirements of section 252 of Pub. L. 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985, the rate specified in paragraph (c)(1)(iii) of this section is reduced to the greater of three percent or the specified rate less four-tenths of one percentage point.

(3)(i) The special allowance rate payable for a three-month period on an eligible loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, is one-half the rate determined under paragraph (c) (1) or (2) of this section, but not less than-

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One-half of one percent per year on eligible loans for which the applicable interest rate is nine percent.

(ii) The rate established in paragraph (c)(3)(i) of this section also applies to a loan made or purchased with funds obtained from-

(A) Collections or default reimbursements on, or interest or other income pertaining to, a loan described in paragraph (c)(3)(i) of this section; or

(B) The investment of the funds described in paragraph (c)(3)(ii)(A) of this section.

(d) Termination of special allowance payments on a loan. (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date-

(i) The borrower's loan is repaid or the borrower's loan check is returned uncashed to the lender;

(ii) The lender receives payment on a claim for loss on the loan;

(iii) The loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(iv) Ninety days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor prior to that 90th day; or

(v) One hundred twenty days after the date of disbursement, if the loan check has not been cashed on or before that date, or if the loan proceeds disbursed by electronic funds transfer in accordance with Sec. 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(2) Section 682.413(a) sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(e) (1) Except as otherwise provided in Subpart H of this part, the Secretary pays a special allowance on a loan made or acquired with the proceeds of an obligation the interest income from which is exempt from taxation under the Internal Revenue Code only if the Secretary has approved-

(i) The Plan for Doing Business of the Authority which issued the obligation, if the obligation was issued after December 31, 1980; and

(ii) The justification of need for the obligation, if the obligation was issued after August 14, 1983.

(2) As used in this paragraph, proceeds of a tax-exempt obligation include collections, reimbursements from guarantors, interest received, and receipts from the sale of loans financed with the original proceeds of that obligation.

(3) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) or (c)(2) of this section on a loan made or acquired with the proceeds of a tax-exempt obligation after the loan is pledged or otherwise transferred in consideration of funds derived from sources other than a tax-exempt obligation and-

(i) The prior tax-exempt obligation is retired; or

(ii) The prior tax-exempt obligation is defeased by means of obligations which the Authority certifies in writing to the Secretary bear a yield which does not exceed the yield permitted under 26 CFR 1.103-14 with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.303 Methods for computing interest benefits and special allowance.

(a) General. The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on its loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) Average daily balance method for interest benefits. (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, and divides the sum by the number of days in the quarter. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The lender computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year or 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(c) Actual accrual method for interest benefits. (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year or 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter is the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) Average daily balance method for special allowance. (1) To compute the average daily balance outstanding for special allowance purposes, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter and divides this sum by the number of days in the quarter. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

Sec. 682.304 Procedure for payment of interest benefits and special allowance.

(a) General. (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under Sec. 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under Sec. 682.202(c).

(3) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of those fees refunded to borrowers, during the quarter covered by the report.

(4) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary. In either case, the lender making the loan and any subsequent holder are jointly and severally liable for payment of the origination fee to the Secretary.

(b) Penalty interest. (1)(i) If the Secretary does not pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance shall be deemed to occur, for purposes of this paragraph, when the Secretary-

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt which the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due the lender to another Federal agency for credit against a debt that the agency has determined is owed it by the lender.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of-

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate on those loans computed under Sec. 682.302(c) for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of-

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary pays the interest benefits and special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(5) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(6) A request for interest benefits and special allowance is not considered accurate if it requests payments to which the lender is not entitled under secs. 682.300-682.303, or includes loans that the Secretary has directed the lender in writing to exclude from the request.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

(Reporting and recordkeeping requirements contained in paragraph (a)(3) were approved by the Office of Management and Budget under control number 1840-0538)

Subpart D-Guarantee Agency Programs

Source: 51 FR 40902, Nov. 10, 1986, unless otherwise noted.

Sec. 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSLP and the PLUS Program and to receive the various payments and benefits incident to that participation.

(b) There are five agreements:

(1) Basic program agreement. In order to participate in the GSLP and the PLUS Program a guarantee agency must have a basic program agreement. Under this agreement-

(i) Borrowers whose GSLP loans are guaranteed may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the other agreements described in this section.

(2) Federal advances for claim payments agreement. A guarantee agency must have a Federal advances for claim payments agreement to receive and use Federal advances to pay default claims.

(3) Reinsurance agreement. A guarantee agency must have a reinsurance agreement to receive reimbursement from the Secretary for at least 80 percent of its losses on default claims.

(4) Supplemental reinsurance agreement. A guarantee agency must have a supplemental reinsurance agreement to receive reimbursement from the Secretary for up to 100 percent of its losses on default claims.

(5) Secondary administrative cost allowance agreement. A guarantee agency must have a secondary administrative cost allowance agreement to receive that allowance.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act or the regulations that apply to the GSLP or the PLUS Program.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1082, 1087, 1087-1)

Sec. 682.401 Basic program agreement.

(a) In order to participate in the GSLP and the PLUS Program, a guarantee agency must enter into a basic agreement with the Secretary.

(b) In the basic agreement, the guarantee agency must agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) Aggregate loan limits. The aggregate guaranteed unpaid principal amount for all GSLP and PLUS Program loans made to a borrower may not exceed the amounts set forth in Sec. 682.204 (b) and (d).

(2) Annual amounts. (i) The annual loan amount authorized for an academic year must be at least $1,000, but may not exceed the amounts set forth in Sec. 682.204 (a) and (c).

(ii) If the program guarantees loans to an eligible half-time student borrower or to a parent borrower on behalf of an eligible half-time student, the annual loan amount authorized for an academic year must be at least $500.

(iii) A guarantee agency may make the loan amounts authorized under paragraphs (b)(2)(i) and (ii) of this section applicable for either-

(A) A period that does not exceed 12 months; or

(B) A period in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iv) In no case may the amount of the loan exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(3) Duration of borrower eligibility. (i) A student borrowing under the GSLP or the PLUS Program, and a parent borrowing on behalf of a student under the PLUS Program, must be eligible to borrow for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study or the equivalent.

(4) Borrower responsibilities. (i) The borrower shall promptly notify the lender of any change of name or address.

(ii) The borrower shall give to the lender, as part of the loan application process-

(A) A statement, described in Sec. 682.203, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the borrower is eligible for the loan;

(C) Information concerning the borrower's outstanding GSLP and PLUS Program loans, and, if the borrower is a parent, information on the outstanding GSLP and PLUS Program loans made to or on behalf of the student;

(D) A statement of the sources and amount of other financial assistance from Federal, State, institutional or other scholarship, grant, work, or loan programs, that the student has received or expects to receive for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount that may be borrowed by or on behalf of the student.

(5) Loan disbursement. The guarantee agency shall require that a lender disburse loan funds as required by Sec. 682.207.

(6) Insurance premiums. (i) The guarantee agency may charge the lender an insurance premium on each loan. The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program. The lender may deduct this charge from the borrower's loan proceeds. The guarantee agency may not use the proceeds of this charge to make incentive payments to lenders or to increase yields to lenders.

(ii) The amount of the insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(iii) The lender shall refund to the borrower, by a credit against the borrower's loan balance, all or a part of the insurance premium paid by the borrower on a GSLP loan under the following circumstances:

(A) The premium, or the portion thereof attributable to a portion of a multiply disbursed loan, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if the loan is repaid in full, or the loan check has not been cashed within 120 days of disbursement, or the loan proceeds disbursed by electronic funds transfer in accordance with Sec. 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(C) If the insurance premium is charged for a period extending beyond one year after the borrower's anticipated graduation date, the insurance premium must be refunded to the borrower in accordance with paragraph (b)(6)(iv) of this section.

(iv) (A) If a borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium on a GSLP loan attributable to the repayment period must be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as a prepayment of the insurance premium for a later period, if a premium will be required for that period, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited first to accrued interest and then to the principal balance of the loan.

(C) If a borrower prepays the entire unpaid balance of the loan, the amount of any insurance premium attributable to a period following the date of prepayment by two or more years must be refunded to the borrower.

(v) The insurance premium for a PLUS Program loan need not be refunded under any circumstances.

(7) Guarantee liability. The guarantee agency shall guarantee at least 80 percent of the unpaid principal balance of each loan guaranteed.

(8) Guarantee agency administration. In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(9) Loan assignment. (i) The guarantee agency shall allow a loan to be assigned only to-

(A) An eligible lender;

(B) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition; or

(C) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(10) Standards and procedures. (i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for-

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(g)(1) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(E) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program, and all participants in its program, at all times meet the requirements of Subparts B, C, D and F of this part.

(11) The guarantee agency shall establish and follow a system and procedures for monitoring the enrollment status of a student borrower that include, at a minimum-

(i) Transmitting a student status confirmation request to the school for completion at least semi-annually; and

(ii) Reporting to the current holder of the loan, within 60 days of receipt of the completed request from the school, any change in the student's enrollment status that triggers-

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments.

(12) The guarantee agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(13) The guarantee agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by Sec. 682.414(b).

(c) (1) The guarantee agency shall ensure that it, or an eligible lender described in section 435(g)(1)(D) of the Act, serves as a lender of last resort in its State.

(2) The lender of last resort shall make a GSLP loan to any eligible student who-

(A) Qualifies for interest benefits, pursuant to Sec. 682.301 for a loan amount of at least $200; and

(B) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guarantee agency, or an eligible lender described in Sec. 435(g)(1)(D) of the Act, may make a loan required by this paragraph through an agreement with an eligible lender.

(d) (1) The guarantee agency shall submit to the Secretary its application forms, promissory notes, and write-off criteria and procedures. The agency shall not use these materials until the Secretary approves them.

(2) The guarantee agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, and other materials that substantially affect the operation of the agency's program whenever changes or new materials are proposed. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guarantee agency shall ensure that all program materials meet the requirements of Federal and State law.

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (b)(4) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.402 Death, disability, and bankruptcy payments.

(a) General. (1) References in this section to death and disability claims relate only to loans made after December 14, 1968. If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968, dies or becomes totally and permanently disabled, the Secretary reimburses the guarantee agency under the provisions of Sec. 682.404.

(2) If a PLUS Program loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if a default claim for the loan previously has been disapproved by the guarantee agency, or if the loan would not qualify either for payment of a default claim or for reinsurance payments.

(b) Death. (1) If an individual borrower dies, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled.

(2) The lender may determine that a borrower has died on the basis of a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the guarantee agency on the basis of other evidence that the agency finds conclusive.

(3) Once the lender has determined that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(4) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) Total and permanent disability. (1) If the lender determines that an individual borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided or approved by the Secretary, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives the certification or receives a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. After receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim described in paragraph (c)(2) of this section.

(4) If the lender determines that a loan owed by a borrower who claims to be totally and permanently disabled is not eligible for cancellation for that reason, or if the lender has not received the physician's certification, described in paragraph (c)(2) of this section, within 60 days of the receipt of the physician's letter described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter described in paragraph (c)(2) of this section, and may capitalize, in accordance with Sec. 682.202(b), any interest payments forborne.

(d) Bankruptcy. (1) If an individual borrower's repayment obligation on a loan is discharged in bankruptcy, the Secretary assumes the borrower's liability for unpaid principal and interest on the loan.

(2) The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court.

(3) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan, except as required by paragraph (d)(4)(ii) of this section, and shall file a proof of claim with the bankruptcy court within 30 days after the lender receives notice of the first meeting of creditors.

(4) (i) If the loan has not been in repayment for at least five years (exclusive of any applicable suspension of the repayment period) on the date the lender receives notice of the first meeting of creditors, the lender shall hold the loan and promptly inquire of the bankruptcy court whether a petition to have the loan obligation declared dischargeable in bankruptcy on grounds of undue hardship (hereinafter referred to as a "hardship petition") has been filed by the borrower.

(ii) If the lender determines, based on its inquiry under paragraph (d)(4)(i) of this section, that the borrower has not filed a hardship petition, the lender shall continue to hold the loan, and not attempt collection, until the bankruptcy action is concluded. Thereafter, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy action is concluded.

(iii) The lender shall file a bankruptcy claim on the loan with the guarantee agency, in accordance with paragraph (e) of this section, if-

(A) The borrower has filed a petition for relief under Chapter 13 of the Bankruptcy Code;

(B) The loan has been in repayment for more than five years (exclusive of any applicable suspension of the repayment period); or

(C) The loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period) and the lender determines that the borrower has filed a hardship petition.

(e) Claim procedures for a loan held by a lender-(1) Documentation. A lender shall provide the guarantee agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim-

(A) Evidence that a bankruptcy petition has been filed, written evidence of the lender's efforts to determine if the borrower filed a hardship petition, an assignment to the guarantee agency of the lender's proof of claim, and all pertinent documents sent to or received from the bankruptcy court by the lender; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(2) Filing deadlines. As a condition for obtaining payment, a lender shall comply with the following requirements for filing death, disability, and bankruptcy claims:

(i) A lender must file a death or disability claim with the guarantee agency within 60 days after the lender determines that a borrower has died or is totally and permanently disabled, in accordance with the procedures in paragraphs (b) and (c) of this section.

(ii) A lender must file a bankruptcy claim with the guarantee agency-

(A) Within 30 days after the lender receives notice of the first meeting of creditors in a borrower's bankruptcy proceeding, if the loan has been in repayment for more than 5 years (exclusive of any applicable suspension of the repayment period);

(B) Within 30 days after the lender determines that the borrower has filed a hardship petition, if the loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period); or

(C) Within 30 days after receiving notice of the first meeting of creditors, if the borrower files a petition for relief under Chapter 13 of the Bankruptcy Code.

(f) Payment of death, disability, and bankruptcy claims by the guarantee agency-(1) General. After determining that a death, disability, or bankruptcy claim is valid, the guarantee agency shall pay the lender the amount of loss in accordance with this paragraph.

(2) Amount of loss to be paid on a claim. (i) The amount of loss to be paid on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with Sec. 682.202(b).

(3) Payment of interest. If the guarantee covers unpaid interest, the payment of an approved claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guarantee agency for additional documentation necessary for the claim to be approved by the guarantee agency.

(iii) During the period required by the guarantee agency to approve the claim and to authorize payment.

(g) Treatment of loans acquired by the guarantee agency through the payment of bankruptcy claims to lenders.(1) After payment of a bankruptcy claim to a lender, the guarantee agency shall diligently contest the discharge of the loan by the bankruptcy court. Once the dischargeability of the loan has been decided in a bankruptcy action, the guarantee agency shall-

(i) Submit the bankruptcy claim to the Secretary for reimbursement, if the loan is discharged; or

(ii) Treat the loan as if forbearance had been exercised as to repayment of principal and interest from the date of filing of the bankruptcy petition until the date the court held the loan to be non-dischargeable, if the court so held, and either-

(A) Require the lender that filed the claim to repurchase the loan; or

(B) Permit another eligible lender to purchase the loan.

(2) In the case of a claim submitted under paragraph (g)(1)(i) of this section, the Secretary pays the guarantee agency the amount of loss that the guarantee agency paid the lender on the bankruptcy claim, plus interest that accrues through the earlier of-

(i) The date the Secretary authorizes payment to the guarantee agency; or

(ii) Sixty days after the date of discharge.

(h) Claim procedures for loans held by a guarantee agency. (1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon only under the following circumstances:

(i) The guarantee agency determines that the borrower has died, became totally and permanently disabled since applying for the loan, or had the loan obligation discharged in bankruptcy, in accordance with the procedures set forth in paragraphs (b) through (d) of this section. For purposes of this paragraph, references to the "lender" in paragraphs (b) through (d) of this section mean the guarantee agency.

(ii)(A) In the case of a PLUS Program loan, when the guarantee agency determines the borrower (or each of the co-makers) has died, became totally and permanently disabled since applying for the loan, or had the repayment obligation discharged in bankruptcy, within 10 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period; or

(B) In the case of a GSLP loan, when the guarantee agency determines the borrower has died, became totally and permanently disabled since applying for the loan, or had the loan discharged in bankruptcy, within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 15-year maximum repayment period;

(iii) The guarantee agency has not written off the loan as uncollectible in accordance with the procedures established by the agency pursuant to Sec. 682.410(b)(4)(x); and

(iv) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to Sec. 682.410(b)(4), until the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy.

(2)(i) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. Interest includes interest that accrues during the lesser of-

(A) The period from the date the guarantee agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(B) Sixty days.

(ii) In addition, the Secretary pays the guarantee agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(i) Payments. If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(j) Suspension of repayment. For purposes of this section, the term "applicable suspension of the repayment period" means any period of time during which the lender did not require the borrower to make payments (e.g., periods of deferment or forbearance).

(Authority: 20 U.S.C. 1078-2, 1082, 1087)

(Reporting and recordkeeping requirements contained in paragraph (e)(1) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to-

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year-

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guarantee agency-

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have substantial affiliation with any eligible educational institution.

(b) A guarantee agency must apply in order to receive an initial advance.

(c)(1) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2) (i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same date of four succeeding years that the initial advance was made.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the "outstanding insurance obligation," referred to in section 422(c)(4) of the Act, is determined separately for each State for which the agency has received an advance under this section.

(Authority: 20 U.S.C. 1072, 1082)

Sec. 682.404 Federal reinsurance agreement.

(a) (1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Under a reinsurance agreement, the Secretary reimburses the guarantee agency for 80 percent of its losses on default claim payments to lenders. This agreement is a prerequisite for the supplemental reinsurance agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of those losses.

(2) For the purpose of this section and Sec. 682.405, "losses" means-

(i) The amount of unpaid principal and accrued interest the agency pays on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the

Secretary reimburses the agency; and

(ii) An amount, not to exceed the lesser of $100 or two percent of the amount of unpaid principal the agency pays on a default claim, expended by the agency for the administrative costs of supplemental preclaim assistance for default prevention as defined in section 428(c)(6) of the Act, to the extent the agency has not been reimbursed for those costs under paragraph (e)(2)(ii) of this section or Sec. 682.407.

(3) (i) Death and disability claims on loans made prior to December 15, 1968, are covered by the reinsurance agreement. The guarantee agency is not required to attempt to collect the loan from the borrower or the borrower's estate after the borrower dies or becomes totally and permanently disabled.

(ii) Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Bankruptcy claims also are not covered. The Secretary's payments on these death, disability, and bankruptcy claims are addressed in Sec. 682.402.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of-

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans;

(2) Efforts by the guarantee agency to make GSLP and PLUS Program loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(c) The reinsurance agreement contains terms and conditions that the Secretary finds necessary to promote the purposes of the GSLP and the PLUS Program and to protect the United States from unreasonable risks of loss.

(d) A reinsurance agreement provides that payments made to a guarantee agency by a borrower must first be applied to the payment of all accrued interest, then to repayment of principal, then to payment of the agency's administrative costs of supplemental preclaims assistance for default prevention, and then to payment of other charges.

(e) (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For the purpose of this section and Sec. 682.405, "the Secretary's equitable share" means that portion of borrower payments, attributable to principal, interest and administrative costs of supplemental preclaims assistance for default prevention, which remains after the agency has deducted-

(i) An amount equal to the complement of the reinsurance percentage which was in effect when the reinsurance payment was made by the Secretary; and

(ii) An amount, not exceeding 30 percent of borrower payments, expended by the agency for the administrative costs of collection of loans, the administrative costs of preclaims assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers, to the extent the agency has not been reimbursed for these costs under paragraph (a)(2) of this section or Sec. 682.407.

(3)(i) The terms "administrative costs of collection of loans," "administrative costs of preclaims assistance for default prevention," and "administrative costs of supplemental preclaims assistance for default prevention," as used in this paragraph, are defined in section 428(c)(6) of the Act. The term "administrative costs of monitoring the enrollment status of students and repayment status of borrowers," as used in this paragraph, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in section 428(c)(6) of the Act, except that the reference to repayment status, in cases where the borrower is a parent, refers to that of the parent borrower.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(4) Unless the Secretary approves otherwise, the guarantee agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 60 days of its receipt of the payments.

(5) If a guarantee agency, in determining the Secretary's equitable share of borrower payments, includes as an administrative cost a portion of the price of an asset it buys and-

(i) If the agency subsequently sells that asset, the agency shall promptly repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid by the Secretary; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly repay to the Secretary a percentage of the fair market value of the asset equal to the percentage of the original purchase price of the asset paid by the Secretary.

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

Sec. 682.405 Supplemental Federal reinsurance.

(a) (1) The Secretary may enter into a supplemental reinsurance agreement with a guarantee agency that has a reinsurance agreement and that meets the requirements of this section. Under a supplemental reinsurance agreement, the Secretary reimburses the guarantee agency for up to 100 percent of its losses, with the following exceptions:

(i) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of its losses.

(ii) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches nine percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of its losses.

(2) For purposes of this paragraph, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency-

(i) On loans considered in default under Sec. 682.412(f); or

(ii) Under a policy established by the agency that is consistent with Sec. 682.509(a)(1).

(3) Notwithstanding paragraph (a)(1) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses under a supplemental reinsurance agreement during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(b) For purposes of this section-

(1) "Amount of loans in repayment" means the original principal amount of all loans guaranteed by the agency minus-

(i) The original principal amount of loans on which-

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for guarantee claims on loans, exclusive of claims paid-

(A) On loans considered in default under Sec. 682.412(f); or

(B) Under a policy established by the agency that is consistent with Sec. 682.509(a)(1).

(2) "Losses" is defined in Sec. 682.404(a).

(3) "The Secretary's equitable share" is defined in Sec. 682.404(e).

(c) (1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and the PLUS Program, the agency must include its loans under both programs in calculating the Secretary's reinsurance payment percentage and the amount of loans in repayment.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under Sec. 682.404 enters into a supplemental reinsurance agreement for one, but not both, of the programs, the guarantee agency must maintain separate records for each program sufficient to enable the Secretary to determine-

(i) The reinsurance percentage payable by the Secretary on reinsurance claims filed by the agency under each program; and

(ii) The Secretary's equitable share of borrower payments, as defined in Sec. 682.404(e), received after payment by the Secretary of reinsurance claims under each program.

(d)(1) The supplemental reinsurance agreement requires that-

(i) The agency shall ensure that the program requirements of paragraph (e) of this section are continuously met;

(ii) An agreement may be renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of the Act and applicable regulations; and

(iii) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30, containing complete and accurate data, in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year.

(2) A supplemental reinsurance agreement may contain other requirements that the Secretary finds necessary.

(e)(1) GSLP loan maximums. (i) The maximum annual amount of a GSLP loan that a guarantee agency guarantees for an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be the maximum loan amount specified in Sec. 682.204(a).

(ii) The maximum aggregate unpaid principal amount of GSLP loans that a guarantee agency guarantees for an eligible student must be the maximum amounts specified in Sec. 682.204(b).

(2) PLUS Program loan maximums. (i) The maximum annual amount, attributable to one or more PLUS Program loans, that the agency guarantees for or on behalf of an eligible student who is carrying at least a half-time workload for an academic year or its equivalent, must be-

(A) The maximum loan amounts specified in Sec. 682.204(c) (1) and (2); and

(B) At least $2,500 but not more than $3,000, in the case of a parent borrower on behalf of each eligible student.

(ii) The maximum aggregate unpaid principal, attributable to PLUS Program loans, that the agency guarantees for or on behalf of an eligible student must be-

(A) The amounts specified in Sec. 682.204(d) (1) and (2); and

(B) At least $12,500 but not more than $15,000, in the case of a parent borrower on behalf of each eligible student.

(3) Guarantee liability. The guarantee agency shall guarantee 100 percent of the unpaid principal of each loan guaranteed.

(4) School eligibility. Except in the case of correspondence schools, a guarantee agency's eligibility criteria for the participation of schools in its program may not be more stringent than those for the FISLP and the Federal PLUS program. However, the agency may exclude a school from its program if-

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by the agency under standards and procedures approved by the Secretary; or

(ii) There is a State constitutional prohibition affecting the school's eligibility.

(5) School lender provisions. (i) The agency shall provide that a school may be a lender in its program under reasonable criteria unless-

(A) The school's lending eligibility has been limited, suspended, or terminated by the Secretary under Sec. 682.608 or Subpart G of this part, or by the agency under standards and procedures approved by the Secretary; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographic area that the agency serves.

(6) Out-of-State schools. The agency shall guarantee GSLP or PLUS loans for eligible borrowers who are legal residents of the State where the agency operates, but who attend participating schools out of the State, or, in the case of parent borrowers, are legal residents of the State where the agency operates, but are borrowing on behalf of students attending participating schools out of the State. In guaranteeing these loans, the agency must not impose any restrictions not applicable to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

Sec. 682.406 Conditions of reinsurance coverage.

(a) The Secretary makes a reinsurance payment on a loan to a guarantee agency only if-

(1) The lender exercised due diligence in making, disbursing and servicing the loan, as prescribed by rules of the agency;

(2)(i) The loan check was cashed within 120 days after disbursement; or

(ii) The loan proceeds disbursed by electronic funds transfer in accordance with Sec. 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(3) The lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of Sec. 682.411;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(6) The lender satisfied all conditions of guarantee coverage set by the agency unless the agency reinstated guarantee coverage on the loan, following the lender's failure to satisfy such a condition, pursuant to policies and procedures established by the agency;

(7) The agency paid a default claim filed by the lender thereon with the agency within 90 days of the date the lender filed the claim;

(8) The agency submitted a request for the payment no earlier than 90 days following default, on a form required by the Secretary; and

(9) The agency and lender complied with all other Federal requirements with respect to the loan.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

Sec. 682.407 Administrative cost allowances for guarantee agencies.

(a)(1) The Secretary pays to a guarantee agency having a basic program agreement a primary administrative cost allowance and, to an agency having a reinsurance agreement, a secondary administrative cost allowance.

(2) Payments of allowances under this section to a guarantee agency for any fiscal year, for each administrative cost allowance, equal one-half of one percent of the total principal amount of loans guaranteed by the agency during that fiscal year.

(b)(1) The guarantee agency must submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain-

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section;

(iii) Assurances that sufficient administrative and fiscal procedures, including an independent audit, conducted in accordance with Sec. 682.410(b)(1), will be used to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with Sec. 682.410(b)(1), submitted in a format satisfactory to the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) For the primary allowance only, an estimate of the total amount of new loan volume expected to be guaranteed during the fiscal year; and

(vii) For the secondary allowance only, assurances that the agency's program-

(A) Meets and will continue to meet all the requirements contained in Sec. 682.405(e) for a supplemental reinsurance agreement;

(B) Guarantees GSLP or PLUS loans for eligible students who are not legal residents of the State where the agency operates, but who attend participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools; and

(C) Guarantees PLUS loans to parent borrowers who are not legal residents of the State where the agency operates, but who are borrowing for students attending participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on residents of the State who borrow for students attending schools in the State, other than correspondence schools.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(c)(1) A guarantee agency may use the administrative cost allowances only to meet administrative costs related to the GSLP and the PLUS Programs.

(2) A guarantee agency may not use the administrative cost allowances to meet costs-

(i) Taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency under Sec. 682.404(e); or

(ii) For which the agency has been, or will be, reimbursed from a source other than the payment provided by this section.

(3) If a guarantee agency uses the allowances paid under this section to pay for a portion of the price of an asset it buys and-

(i) If the agency subsequently sells that asset, the agency shall promptly repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid for with the allowances; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly repay to the Secretary a percentage of the fair market value of the asset equal to the percentage of the original purchase price of the asset paid for with the allowances.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (b)(2) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.408 GSLP loan disbursement through a guarantee agency escrow agent.

(a) General. (1) A guarantee agency may act as an escrow agent for the purpose of receiving GSLP loan proceeds disbursed by an eligible lender, other than a school or State lender, and transmitting those proceeds to borrowers, if the lender and guarantee agency have entered into an agreement for this purpose.

(2) In its capacity as escrow agent, the guarantee agency may-

(i) Commingle the proceeds of the GSLP loans paid to it pursuant to an escrow agreement;

(ii) Invest the GSLP loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(iii) Retain for its own use interest or other earnings on those investments.

(b) Disbursement by the lender. Subject to Sec. 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) Transmittal of loan proceeds to a school by the escrow agent. The escrow agent shall transmit loan proceeds received from a lender under this section to the school in accordance with the requirements of Sec. 682.207(b)(1)(ii) and (iv) no later than 30 days after receipt of the funds from the lender.

(d) Return of untransmitted proceeds. The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after learning that the student has not enrolled, or has ceased to be enrolled, on at least a half-time basis for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

Sec. 682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.

(a) When the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary for collection a defaulted loan on which the Secretary has made a payment under Sec. 682.404 or Sec. 682.405. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the guarantee agency.

(b)(1) When a guarantee agency assigns a defaulted loan to the Secretary under this section, the agency releases all rights and title to that loan. The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(2) The agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guarantee agency shall assign a loan to the Secretary under this section at such time, in such a manner, and with such documentation as the Secretary may require.

(2) The documents that the assignor agency shall submit with a loan include, but are not limited to-

(i) The loan application;

(ii) The promissory note; and

(iii) The payment and collection histories for the loan.

(3) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note evidencing a loan assigned under this section.

(d) Assignment of a loan does not affect calculation of any default rate under this part. However, the Secretary accounts, in calculations of relevant default rates, for any collections achieved by the Secretary on loans assigned by an agency.

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.410 Fiscal, administrative, and enforcement requirements.

(a) Fiscal requirements. A guarantee agency shall establish, at a minimum, the following fiscal procedures:

(1) The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit-

(i) Federal advances obtained under, and matching funds required by, section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under Sec. 682.403;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under Sec. 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on defaulted loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Funds earned from investments under paragraph (a)(5) of this section.

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to-

(i) Guarantee loans under the guarantee agency's loan guarantee program;

(ii) Pay default claims;

(iii) Pay death, disability, and bankruptcy claims;

(iv) Refund overpayments of insurance premiums;

(v) Pay to the Secretary the Secretary's equitable share of borrower payments; and

(vi) Repay advances made by the Secretary.

(3) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use loan insurance premiums, administrative cost allowances, interest or investment earnings, and funds described in paragraph (a)(1)(vi) of this section for payments necessary for the proper administration of the guarantee agency's loan guarantee program.

(4)(i) The guarantee agency may use the amount of Federal advances identified in paragraph (a)(1)(iii) of this section, and interest or other earnings on those advances, only to pay default claims.

(ii) The guarantee agency shall account separately for the funds described in paragraph (a)(4)(i) of this section.

(5) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(6) If the guarantee agency uses loan insurance premiums or funds earned from investments under paragraph (a)(5) of this section to buy an asset and-

(i) If the agency subsequently sells that asset, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid with the insurance premiums and investment earnings; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value of the asset equal to the percentage of the original purchase price paid with the insurance premiums or investment earnings.

(b) Administrative requirements. A guarantee agency shall establish, at a minimum, the following administrative procedures:

(1) The guarantee agency shall arrange for an independent biennial financial and compliance audit of the agency's guaranteed loan program that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its loan guarantee program.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's Standards.

(iv) The audit must be conducted not less frequently than once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than the effective date of this requirement. Each subsequent audit must cover the agency's activities for a period beginning no later than the end of the period covered by the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 satisfies the requirements of this paragraph for the period covered by the audit.

(2) The guarantee agency shall charge interest on the amount for which the Secretary has paid a reinsurance claim to the guarantee agency, at a rate that is the greater of-

(i) The rate established by the terms of the original promissory note; or

(ii) The rate provided for by State law.

(3) The guarantee agency shall promptly report to all national credit bureaus-

(i) The date of default;

(ii) Information concerning collection of the loan, including the repayment status of the loan; and

(iii) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy or total and permanent disability.

(4)(i) The guarantee agency shall engage in at least the collection efforts described in paragraphs (b)(4) (iii) through (ix) of this section on a loan on which it pays a default claim filed by a lender.

(ii)(A) The periods of time set forth in paragraphs (b)(4) (iii) through (vii) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or, in the case of a borrower whom the agency locates through the use of skip tracing under paragraph (b)(4)(xii) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. References to the "borrower" include all endorsers on a loan.

(B) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(4) (iii) through (vii), but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If no subsequent payments are received during the 60-day period, the agency shall resume its use of the collection efforts described in this paragraph (b)(4), treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(4)(iv) of this section.

(iii) One--45 days: During this period, the agency shall-

(A) Send a written notice to the borrower stating that the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan. In addition, the notice must forcefully demand that the borrower immediately commence repayment of the loan, and must inform the borrower that the agency will report the default to all national credit bureaus, thereby damaging the borrower's credit rating, may institute a civil suit against the borrower to compel repayment of the loan, and may refer the debt to the Department for collection by offset against Federal income tax refunds due the borrower; and

(B) Diligently attempt to contact the borrower by telephone to demand repayment of the loan.

(iv) Forty-six--90 days: During this period the agency shall-

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send a written notice to the borrower demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to a credit bureau and that the borrower's credit rating has thereby been damaged.

(v) Ninety-one--135 days: During this period, the agency shall-

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send one additional collection letter at least as forceful as the notice described in paragraph (b)(4)(iii)(A) of this section.

(vi) One hundred thirty-six–180 days: During this period, the agency shall send a written notice to the borrower forcefully demanding repayment in full on the loan, and indicating that it is the final notice the borrower will receive before the agency may institute a civil suit to compel repayment of the loan;

(vii) One hundred eighty-one--225 days: During this period, but not sooner than 30 days after sending the notice described in paragraph (b)(4)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan, unless the agency determines, and documents in the borrower's file, that-

(A) The cost of litigation would exceed the likely recovery if litigation were commenced; or

(B) The borrower does not have the means to satisfy a judgment on the debt, or a substantial portion thereof.

(viii)(A) If the agency does not institute a civil suit against the borrower for repayment of the loan as a result of a determination made pursuant to paragraph (b)(4)(vii)(B) of this section, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt, or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy a judgment on the debt, or a substantial portion thereof, and that the cost of litigation would not exceed the likely recovery if litigation were commenced, then if subsequent collection efforts are not successful, the agency shall, no later than 60 days after the determination, institute a civil suit against the borrower for repayment of the loan.

(C) Determinations made pursuant to this paragraph must be documented in the borrower's file.

(ix)(A) The agency shall diligently attempt to enforce a judgment obtained against a borrower respecting a loan. If, after doing so, the agency is unable to obtain full satisfaction of the judgment because the borrower lacks the means to pay, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired the means to satisfy the remainder of the judgment, the agency shall, not later that 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full on all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in the preceding paragraph, the agency shall, within 30 days thereafter, institute civil proceedings to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(4) (viii) and (ix) of this section only in accordance with write-off criteria and procedures approved by the Secretary.

(xi) Not withstanding paragraphs (b)(4) (vii) through (x), the agency shall file a civil suit against the borrower for repayment of the loan, or to enforce a judgment obtained thereon, prior to the date on which the applicable statute of limitations elapses unless the agency-

(A) Determines, and documents in the borrower's file, that the cost of litigation would exceed the likely recovery if litigation were commenced; or

(B) Has previously written off the debt in accordance with write-off criteria and procedures approved by the Secretary.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the borrower's current address, or the 60th day after its payment of a default claim on a loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(c) Enforcement requirements. A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews of at least-

(i) Each participating lender whose loan volume guaranteed by the agency in the preceding year-

(A) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency; or

(B) Was one of the ten largest among lenders whose loans were guaranteed in that year by the agency;

(ii) Each participating school whose students received, or benefitted from, loans guaranteed by the agency in the preceding year, the total amount of which-

(A) Equaled or exceeded two percent of the total of all loans guaranteed in the preceding year by the agency; or

(B) Was one of the ten largest among schools whose students received or benefitted from loans guaranteed in that year by the agency and,

(iii) Each participating school located in a State for which the guarantee agency is the principal guarantee agency that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in Sec. 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 34 CFR 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000.

(2) Seeking prompt repayment of all funds found in those reviews to have been improperly retained by the participants, and monitoring the implementation by partici-

pants of corrective actions required by the agency as a result of those reviews.

(3) Adopting procedures for identifying fraudulent loan applications.

(4) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct, including violations of Federal law or regulations, by its program participants.

(5) Promptly reporting all of the allegations and indications having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(6) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(7) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(Authority: 20 U.S.C. 1078, 1078-1, 1082, 1094, 1097)

Sec. 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(a) In the event of delinquency on a loan guaranteed by a guarantee agency, the lender shall engage in at least the collection efforts described in paragraphs (c) through (h) of this section.

(b) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment not later made, or 30 days after the day the lender discovers that the borrower has entered the repayment period, whichever is later. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment not later made.

(c) One--30 days delinquent: During this period, the lender shall send at least two written notices or collection letters to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) Thirty-one--60 days delinquent: During this period, the lender shall make diligent efforts to contact the borrower by telephone. If the lender is unable, despite those efforts, to reach the borrower by telephone, the lender shall send at least two forceful collection letters to the borrower urging the borrower to cure the delinquency. The letters shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency, which in turn will report the default to a credit bureau, thereby damaging the borrower's credit rating, and may bring suit against the borrower to compel repayment of the loan.

(e) Sixty-one--150 days delinquent: During each thirty-day period comprising this period, the lender shall again make diligent efforts to contact the borrower by telephone. During each thirty-day period, if the lender is unable, despite those efforts, to reach the borrower by telephone, the lender shall send at least one more collection letter no less forceful than those described in paragraph (d) of this section.

(f) One hundred fifty-one--180 days delinquent: During this period, the lender shall send a final demand letter to the borrower, unless the borrower's address is unknown, requiring repayment of the loan in full and notifying the borrower that a default will be reported to all national credit bureaus. The lender shall allow the borrower at least 30 days to respond to the final demand letter and to make payments sufficient to bring the loan out of default before filing a default claim on the loan or reporting that default to a credit bureau.

(g) Within 10 days of its receipt of information indicating it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower, through the use of normal commercial skip-tracing techniques. These efforts shall include, but not be limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

[NOTE PER JUNE 5, 1989 FEDERAL REGISTER: Section 682.411 (h) applies only to a loan for which a request for preclaims assistance is made on or after December 4, 1989. Also, if a lender holds more than one loan made to a specific borrower, and those loans were acquired by the lender prior to that date, the requirements of 682.411(h) are satisfied as to all of those requirements as to at least one of those loans.]

(Authority: 20 U.S.C. 1078, 1078-1, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send a final demand letter to the borrower, as required by Sec. 682.411(g), when it learns that the borrower or, if applicable, the student on whose behalf a parent has borrowed-

(1) Did not qualify for all or a portion of a loan made under this part; or

(2) Has received a GSLP loan subject to payment of Federal interest benefits as provided under Sec. 682.301, but is in fact ineligible for some or all of those interest benefits.

(b) The lender shall neither bill the Secretary nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter, transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all interest benefits paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall, on its next quarterly interest billing submitted under Sec. 682.304, refund to the Secretary the interest benefits repaid by the borrower, and all other interest benefits previously billed to the Secretary on the ineligible portion of the loan.

(e) If the borrower repays to the lender the principal amount of the ineligible portion of the loan, the lender shall treat that payment as a prepayment on the loan.

(f) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the loan shall be considered in default. The lender shall, on its next quarterly interest request submitted under Sec. 682.304, refund the interest paid on the ineligible portion of the loan by the Secretary, and the lender shall file a default claim thereon with the guarantee agency for the entire unpaid balance of principal and accrued unpaid interest within the time specified in Sec. 682.406(a)(4).

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance on a loan guaranteed by a guarantee agency-

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in Sec. 682.406(a)(1) through (a)(5) and (a)(9);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period as to which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under Sec. 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments on a loan-

(1) If the lender or the agency failed to meet the requirements of Sec. 682.406(a); or

(2) If the agency failed to exercise due diligence in collection of the loan in accordance with procedures established under Sec. 682.410(b)(4).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(1) Require the repayment by the agency of payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the GSLP or PLUS Program.

(4) Suspend or terminate agreements with the agency.

(5) Require repayment from the agency of any related payments which the Secretary has become obligated to make to others.

(d) The Secretary's decision to require repayment of funds by a lender or agency, to withhold funds from an agency, or to limit, suspend, or terminate an agency's GSLP or PLUS Program participation, does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(e) Notwithstanding paragraphs (a) through (d) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if, in the Secretary's judgment, the best interests of the United States so require.

(f) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a lender or guarantee agency under this section is conclusive and binding on the lender or agency. (Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1087-1, 1097)

Sec. 682.414 Records, reports, and inspection requirements for guarantee agency programs.

(a) Records. (1) A guarantee agency shall keep the records required by this section and such other records as are necessary to document fully the accuracy of reports required by this subpart and the right of the agency to receive or retain payments made by the Secretary under this part.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guarantee agency shall require a participating lender to keep complete and accurate records of each loan that it holds, including but not limited to the records described in paragraph (a)(3)(ii) of this section. The records must be organized in such a way as to permit ready identification of the current status of each loan.

(ii) The lender shall keep-

(A) The loan application;

(B) The original promissory note, including the repayment instruments, until the loan is fully repaid, after which a copy is required;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment which was attributed to principal and to interest;

(J) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

(4)(i) A guarantee agency or lender may store the records specified in paragraphs (a)(3)(ii)(C) through (K) of this section on microfilm or in computer format.

(ii) A lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under a procedure that is alternatively acceptable under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or the guarantee agency shall retain the original loan application or a copy.

(b) Reports. A guarantee agency shall submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at such time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency amounts that are dependent upon data contained in the report until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) For a guarantee agency with a supplemental reinsurance agreement, by July 1 of each year, a report on-

(i) Its eligibility criteria for school lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months and a summary of the action taken on those applications;

(iv) A list of all school lenders participating in the agency's program;

(v) A description of any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(vi) The steps the agency has taken to ensure its compliance with Sec. 682.410(c) (2) through (6), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Any other information concerning the loan insurance program, at such frequency as determined by the Secretary.

(c) Inspection requirements. (1) A guarantee agency shall give the Secretary or the Secretary's designee access to its records in order to verify the correctness of the reports described in paragraph (b) of this section, or the right of the agency to receive or retain payments made by the Secretary under this part.

(2) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records in order to verify the accuracy of the information provided by the lender pursuant to Sec. 682.401(b) (12) and (13), and the right of the lender to receive or retain payments made under this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1087-1)

(Reporting and recordkeeping requirements contained in

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paragraphs (a)(3) and (b)(2) were approved by the Office of Management and Budget under control number 1840-0538)

Subpart E-Federal Insured Student Loan Program and Federal PLUS Program

Source: 51 FR 40913, Nov. 10, 1986, unless otherwise noted.

Sec. 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all-

(1) FISLP and Federal PLUS Program loans made by lenders located in a State in which no State or private nonprofit guarante agency has in effect an agreement with the Secretary under Sec. 682.401 to serve as guarantor in that State;

(2) Federal PLUS Program loans made by lenders in a State in which a State or private nonprofit guarantee agency has in effect an agreement with the Secretary under Sec. 682.401 but does not provide a loan guarantee program for PLUS borrowers; and

(3) FISLP loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISLP loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for-

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISLP loan that has not been repaid; or

(4) All students at a school located in the State, if the Secretary finds that-

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans. The Secretary may guarantee loans made to those students by a lender in that State if-

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISLP; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISLP loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender-

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the FISLP, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender which has entered into an agreement with the Secretary under Sec. 682.601, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078-2, 1082)

Sec. 682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.

(a) General. Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any FISLP loan or Federal PLUS Program loan is 100 percent of the unpaid principal balance and, to the extent permitted under Sec. 682.512, accrued interest.

(b) Special provisions for State lenders. (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year does not include paid claims filed by the lender under the provisions of Sec. 682.208(d) or Sec. 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under either the FISLP or the Federal PLUS Program, and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the FISLP and Federal PLUS Program loans in repayment" means the original principal amount of all FISLP and Federal PLUS Program loans guaranteed by the Secretary less-

(i) The original principal amount of loans on which-

(A) Under the FISLP, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under Sec. 682.208(d) or Sec. 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate FISLP and Federal PLUS Program loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1075, 1078-2, 1082)

Sec. 682.502 The application to be a lender.

(a) In order to be considered for participation in the FISLP and the Federal PLUS Program, a lender must submit an application to the Secretary.

(b) In determining whether to enter into a guarantee contract with an applicant, and, if so, what the terms of the contract will be, the Secretary considers-

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(g)(1) of the Act and the definition of "lender" in Sec. 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status (with the preferred condition being accredited).

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d) Denial of participation: (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(Authority: 20 U.S.C. 1078-2, 1079, 1082)

Sec. 682.503 The guarantee contract.

(a)(1) To participate in the FISLP and Federal PLUS Program, a lender must hold a guarantee contract with the Secretary. No loan is guaranteed unless it is covered by such an agreement.

(2) In general, under a guarantee contract, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the FISLP and the Federal PLUS Program. In return the Secretary agrees to guarantee each eligible FISLP and Federal PLUS Program loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in a contract a limit on the duration of the contract and the number or amount of FISLP or Federal PLUS Program loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee contract with a school lender limits the FISLP and Federal PLUS Program loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are-

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) A limit imposed under paragraph (b)(1) of this

section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools, may be imposed on a school-by-school basis.

(Authority: 20 U.S.C. 1078-2, 1079, 1082)

Sec. 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee contract shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan can be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a FISLP or Federal PLUS Program loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in Sec. 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collecting of a FISLP or Federal PLUS Program loan.

(Authority: 20 U.S.C. 1078-2, 1079, 1082)

Sec. 682.505 Insurance premium.

(a) General. The Secretary charges the lender an insurance premium for each loan that is guaranteed.

(b) Rate. The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) FISLP loans-insurance premium calculation. (1) The insurance premium for FISLP loans is calculated by-

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) PLUS loans-insurance premium calculation. The insurance premium for a Federal PLUS Program loan is calculated by-

(1) Using the actual repayment period as a base;

(2) Amortizing the loan in monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Totalling the monthly amounts derived in paragraph (d)(3) of this section.

(e) Collection from lenders. (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that-

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) Collection from borrowers. The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) Refund provisions. The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078-2, 1079, 1082)

Sec. 682.506 Limitations on maximum loan amounts.

The Secretary does not guarantee a FISLP or Federal PLUS Program loan in an amount that would-

(a) Result in an annual loan amount in excess of the student's estimated cost of attendance for the academic period for which the loan is intended less the estimated financial assistance awarded for that period; or

(b) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in Sec. 682.204.

(Authority: 20 U.S.C. 1075, 1078, 1078-2, 1082, 1089)

Sec. 682.507 Due diligence in collecting a loan.

(a) General. (1) A lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section when a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender discovers that the borrower has entered the repayment period.

(b) Initial delinquency. When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower at least six more times at regular intervals during the remainder of the six-month period that started on the due date of the delinquent payment.

(c) Skip-tracing assistance. (1) Whenever a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection techniques, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) Preclaims assistance. When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) Final demand letter. A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) Litigation. (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest together with reasonable attorneys' fees.

(2) Prior to bringing suit the lender shall-

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that, unless the borrower or endorser makes payments sufficient to bring the account out of default, the lender will seek a judgment under which the borrower or endorser will be liable for payment of reasonable attorneys' fees and court costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its reasonable attorneys' fees and court costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078-2, 1079, 1080, 1081, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.508 Assignment of a loan.

(a) General. A FISLP or Federal PLUS Program note may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) Procedure. (1) A note assigned from one lender to another must be made subject to a blanket endorsement together with other notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer shall-

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) Risks assumed by the buyer. (1) General rules: Upon acquiring a note, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. Neither a FISLP note nor a Federal PLUS Program note is a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or guarantee eligibility of the loan and to the extent of the borrower's legal defenses. When a new holder files a claim on a loan, it shall provide the Secretary with the same documentation that would be required of the original lender.

(2) Special additional rules for assignment of loans made or originated by a school: The buyer of a loan is not entitled to rely on statements made by a school that made or originated that loan. In addition, the Secretary considers any unpaid tuition refund that was due to the student under Sec. 682.606, before the first assignment of a loan that was made or originated by a school, as having been paid to the subsequent holder on the borrower's behalf.

(d) The Secretary's approval. The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under Sec. 682.503.

(e) Trustee responsibility. A lender to whom a loan is assigned in its capacity as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on any other holder of a loan.

(f) Warranty. (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078-2, 1079, 1080, 1082)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in Sec. 682.511(e)(3), when-

(1) The lender learns that the school, in which the student on whose behalf the loan was made was enrolled, terminated its teaching activities involving that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay the loan.

(Authority: 20 U.S.C. 1078-2, 1080, 1082)

Sec. 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in Sec. 682.402 (a) through (d) for determining whether a borrower has died, became totally and permanently disabled, or filed a bankruptcy petition, apply to the FISLP and Federal PLUS Program.

(b) References to the "guarantee agency" in Sec. 682.402 (b)(2) and (d)(4) mean the Secretary.

(Authority: 20 U.S.C. 1078-2, 1082, 1087)

Sec. 682.511 Procedures for filing a claim.

(a) Filing a claim application. (1) A lender may file a claim against the Secretary's guarantee on a FISLP or Federal PLUS Program loan for any of the following reasons:

(i) The loan is in default, as defined in Sec. 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in Sec. 682.208(d) or Sec. 682.509.

(iii) The borrower has died, became totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with Sec. 682.510.

(2) If a PLUS Program loan was obtained by two eligible parents as co-makers, the reason for filing a claim thereon must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender must attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) Documentation required for claims. (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument, in the case of a FISLP loan.

(iv) A payment history, as described in Sec. 682.414(a)(3)(ii)(I), if any payments have been made.

(v) A collection history, as described in Sec. 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter, if required by Sec. 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under Sec. 682.507(c), and for preclaims assistance under Sec. 682.507(d).

(ix) Any additional documentation that the Secretary deems relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in Sec. 682.402(e)(1) apply to the FISLP and the Federal PLUS Program. References to the "guarantee agency" in Sec. 682.402(e)(1) mean the Secretary.

(c) Assignment of note. The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim. The lender shall also agree to reimburse the Secretary for any overpayments of interest benefits or special allowance that the Secretary may have made respecting the loan.

(d) Bankruptcy subsequent to default. If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) Claim filing deadlines. To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) Default claims. Unless the lender has already filed suit against the borrower in accordance with Sec. 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after default. For a claim filed pursuant to Sec. 682.208, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to Sec. 682.412(d), if the borrower failed to comply with the terms thereof within 30 days of such transmission.

(2) Death, total and permanent disability, or bankruptcy claims. The claim filing deadlines in Sec. 682.402(e)(2) apply to the FISLP and the Federal PLUS Program. References to the "guarantee agency" in Sec. 682.402(e)(2) mean the Secretary.

(3) Special condition claims. In the case of a special condition claim filed pursuant to Sec. 682.509, the lender shall file a claim with the Secretary within 90 days of the date the lender determines that the conditions set forth in Sec. 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to Sec. 682.509(a)(2).

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.512 Determination of amount of loss on a claim.

(a) Default claims-(1) Amount of loss. The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received-

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount of loss to be paid on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount of the loss to be paid on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by Sec. 682.202.

(2) Payment of interest. If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in Sec. 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, which is required by the Secretary to approve the claim and to authorize payment.

(b) Death, total and permanent disability or bankruptcy claims. (1) In the case of a death or disability claim, the amount of loss to be paid on a valid claim-

(i) Is equal to the unpaid balance of the original principal loan amount disbursed, if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with Sec. 682.402 (f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with Sec. 682.402 (f)(2) and (f)(3).

(3) In Sec. 682.402(f)(3) the "guarantee agency" means the Secretary.

(c) Special rules for a loan acquired by assignment. Except as provided in paragraph (d)(2) of this section, if a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(d) Special rules for loans made by a school lender. (1) If the loan for which a claim is filed was made by a school and the claim is filed by the school, the Secretary deducts from the claim-

(i) An amount equal to any unpaid refund that the school owes the student to whom or on whose behalf the loan was made under Sec. 682.606; or

(ii) An amount which bears the same ratio to the total amount of the claim as the amount of educational services that the student was unable to complete, because the school terminated its teaching activities during the period for which the loan was obtained, bears to the total educational services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activity.

(2) If the loan for which a claim is filed was originally made by a school, but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim the amount determined-

(i) Under paragraph (d)(1)(i) of this section that was due the student prior to the assignment of the loan; or

(ii) Under paragraph (d)(1)(ii) of this section.

(e) Special rule for loans originated by a school. A loan that is originated by a school is treated, for purposes of paragraph (d) of this section, as if it were a loan made and still held by the school.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1087)

Sec. 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in Sec. 682.509 the Secretary does not pay a claim unless-

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in Sec. 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in Sec. 682.511(b).

(b) Except as provided in Sec. 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim. (Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(Authority: 20 U.S.C. 1078-2, 1079, 1080, 1082)

Sec. 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP or Federal PLUS Program loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in Appendix C to this part.

(Authority: 20 U.S.C. 1078-2, 1080, 1082)

Sec. 682.515 Records, reports, and inspection requirements for FISLP and Federal PLUS Program lenders.

(a) Records. (1) A lender shall keep complete and accurate records of each loan that it holds, including but not limited to the records described in Sec. 682.414(a)(3)(ii). The records must be organized in such a way as to permit ready identification of the current status of each loan.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in Sec. 682.414(a)(3)(ii)(C) through (K) on microfilm or in computer format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) Reports. A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) Inspections. Upon request, a lender or its agent shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the lender's compliance with the Act and applicable regulations.

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840-0538)

Subpart F-Requirements, Standards, and Payments for Participating Schools

Source: 51 FR 40919, Nov. 10, 1986, unless otherwise noted.

Sec. 682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.

(a) General. Participation of a school in the GSLP and the PLUS Program means that the school's students are eligible to receive GSLP and PLUS Program loans. To participate in the GSLP and the PLUS Program under either the FISLP, the Federal PLUS Program, or a guarantee agency program, a school shall-

(1) Establish its basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR Part 668 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by an appropriate official of the school on a form approved by the Secretary.

(b) Program participation agreement. The school, in the program participation agreement, promises to comply with the applicable provisions of-

(1) The Act and the regulations in this part; and

(2) The Student Assistance General Provisions, 34 CFR Part 668.

(c) Appeal of denial or limitations. (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSLP or the PLUS Program by a school-

(i) The reason for the decision is included in the Secretary's response to the request; and

(ii) The Secretary provides an opportunity for the school to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) Foreign schools. A foreign school is required to comply with the provisions of the regulations in this part only to the extent determined by the Secretary.

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

Sec. 682.601 Agreement between the Secretary and a school that makes or originates loans.

(a) General. A school must have an agreement with the Secretary in order to make or originate loans under either the GSLP or the PLUS Program.

(b) Contents of the agreement. An agreement to allow a school either to make or to originate loans must contain the following terms:

(1) The school will not make or originate loans which would be outstanding to or on behalf of more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis, unless the Secretary waives this rule pursuant to paragraph (d) of this section.

(2) The school will inform any undergraduate student, who has not previously obtained a loan that was made or originated by the school and who seeks to obtain that loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence under paragraph (c) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set forth in paragraph (b)(3)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make or originate a loan for an academic year in excess of the lesser of $2,500 or half the estimated cost of attendance to a student who-

(i) Is in the first academic year of study as an undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(c) Establishing a loan denial by a commercial lender. (1) To verify that a borrower has sought and been denied a loan from a commercial lender, pursuant to paragraph (b)(3) of this section, the school shall obtain from the borrower-

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include-

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either-

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(d) Waiver of the 50 percent lending limit. A school may request the Secretary to waive the 50 percent lending limit described in paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering-

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who-

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without GSLP or PLUS Program loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that-

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's-

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1075, 1078, 1078-2, 1082, 1083)

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, which must be given to a prospective student prior to that student's enrollment.

(b) The school shall include in its schedule-

(1) The number of lessons in the course;

(2) The intervals at which lessons are to be submitted;

(3) The date by which the course is to be completed; and

(4) The period of time within which any resident training must be completed.

(c) The school's schedule must conform to the requirements set forth in paragraph (b) of the definition of "vocational school" in 34 CFR 668.4.

(Authority: 20 U.S.C. 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR Part 668 Subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to-

(1) The borrower's eligibility for a loan as determined in accordance with Sec. 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a GSLP loan, the student's eligibility for interest benefits, as determined in accordance with Sec. 682.301.

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first GSL or SLS loan for attendance at the school, so that, in compliance with Sec. 82.604, the school ensures that the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

[NOTE PER JUNE 5, 1989 FEDERAL REGISTER: Section 682.603(c) applies only to the certification of a loan application on or after October 1, 1989.]

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) Purpose. This section establishes rules governing a school's processing of a borrower's loan proceeds. The school shall also comply with any rules for processing a loan contained in 34 CFR Part 668.

(b) General. (1) Except in the case of a PLUS Program loan to a parent borrower, GSLP or PLUS Program loan proceeds are sent directly to the school by the lender.

(2) Except in the case of a late disbursement under paragraph (e) of this section, a school may release the proceeds of a loan made under this part only to a student who the school determines, after it receives the proceeds of the loan from the lender, has maintained eligibility in accordance with the provisions of Sec. 682.201.

(c) Processing of the loan proceeds by the school. (1) Except as provided in paragraph (d)(3) of this section, when a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended, and then follow the procedures in paragraph (c)(2) of this section.

(2)(i) After the student has registered, if the loan proceeds are disbursed by means of a check which requires the endorsement only of the student, the school shall promptly deliver the check to the student in accordance with paragraph (d)(2) of this section.

(ii) If the loan proceeds are disbursed by means of a check which requires the endorsement of both the student and the school, the school shall-

(A) Endorse the check on its own behalf and, after the student has registered, promptly deliver it to the student in accordance with paragraph (d)(2) of this section; or

(B) Obtain the student's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student in accordance with paragraph (d)(2) of this section.

(3) If the loan proceeds are disbursed by electronic transfer to an account of the school on behalf of a borrower in accordance with Sec. 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's written authorization for the release of the funds, and, after the student has registered, either-

(i) Deliver the proceeds to the student in accordance with paragraph (d)(1) of this section; or

(ii) Credit the student's account in accordance with paragraph [illegible](1) of this section and deliver the remaining loan proceeds to the student in accordance with paragraph (d)(2) of this section.

(4) A school may not release the proceeds of a loan made under this part to a borrower for whom a financial aid transcript is required under 34 CFR Part 668 and has not been received, except as permitted by Part 668. If a required financial aid transcript has not been received for a borrower for whom the school has received the proceeds of a GSLP or PLUS Program loan within 45 days of that receipt, and release of the proceeds to the borrower is therefore prohibited by 34 CFR Part 668, the school shall immediately return the loan proceeds to the lender.

(d) Applying the loan proceeds. (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, the earliest an institution may credit a registered student's account is three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed, and any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year.

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii)(A), and (c)(3) of this section, the earliest an institution may deliver loan proceeds to a registered student is 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(3) If the school determines that the student has not registered, the school shall return the loan proceeds to the lender within 30 days of this determination.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or if the school is unable to document that the student attended class during that period, the school shall return to the lender-

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) Any loan proceeds delivered to the student and subsequently paid by the student to the school.

(e) Processing a late disbursement. (1) For the purpose of this paragraph, a disbursement is late if the school receives the student's loan proceeds from the lender either-

(i) After the end of the period of attendance for which the loan was made (i.e., after the expiration date of the guarantee commitment); or

(ii) Before the end of the academic period for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If a late disbursement is accompanied by a notice from the lender that the late disbursement has been approved by the guarantor under Sec. 682.207(d), the school shall follow the procedure described in paragraph (c)(2) of this section.

(3) If a late disbursement is not accompanied by the notice described in paragraph (e)(2) of this section, the school shall-

(i) Return the loan proceeds to the lender within 30 days of its determination that one of the conditions described in paragraph (e)(1) of this section exists;

(ii) Send with the loan proceeds-

(A) A notice that one of the conditions described in paragraph (e)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period in which the student was enrolled on at least a half-time basis; and

(iii) Advise the student that the lender may, in accordance with the procedures in Sec. 682.207(c), redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (e)(1) of this section.

(f) Initial counseling. (1) Except in the case of a correspondence school, a school shall conduct counseling with each GSL and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first GSL or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a GSL or SLS program loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(g) Exit counseling. (1) A school shall conduct in-person exit counseling with each GSL and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must-

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained GSL or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in Appendix D to Part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1082, 1085, 1092, 1094)

(Reporting and recordkeeping requirements were approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.605 Determining the date of a student's withdrawal.

(a) Purpose. This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part, for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under Sec. 682.607 of this part.

(b) The withdrawal date. (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of-

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established under Sec. 682.602. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that

the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school shall not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month and year of the withdrawal date determined under paragraphs (b)(1) through (b)(3) of this section.

(c) Leaves of absence. A student who has been absent from school and has been granted a leave of absence by a school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. In any twelve-month period, a school may grant no more than a single leave of absence to a student, provided that-

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed-

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

Sec. 682.606. Refund Policy.

(a) General. (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a GSL or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for the period of attendance for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete the period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's GSL, SLS, or PLUS program loans under 34 CFR Part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) Fair and equitable refund policy. A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the pro rata refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c)(1) "Pro rata refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less–

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of

weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the borrower has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under Sec. 82.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Sec. 682.607 Payment of a refund to a lender.

(a) General. By applying for a GSLP or PLUS Program loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school-

(1) Shall pay that portion of the student's refund that is allocable to a GSLP or PLUS Program loan to-

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, when the school pays a refund to a lender on behalf of that student.

(b) Allocation of refund. In determining what portion of a student's refund for an academic period is allocable to a loan received by the borrower for the same academic period, the school shall follow the procedures established in 34 CFR Part 668.

(c) Timely payment. A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as determined under Sec. 82.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (e.g., semester, quarter, or trimester) in which the student withdrew, as determined under Sec. 82.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under Sec. 82.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under Sec. 82.605(c), within 30 days after the last day of that leave of absence.

(d) Transition requirements. In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provisions for compliance with the requirements of this section with regard to students who obtained, or on whose behalf parents obtained, loans for periods of attendance at the school that began prior to the school's change in status.

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

Sec. 682.608 Termination of a school's lending eligibility.

(a) General. The Secretary terminates a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) The 15 percent limit. (1) The Secretary terminates a school's eligibility to make loans if, at the end of each of the two most recent consecutive fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that-

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSLP and PLUS Program loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) Exception based on hardship. The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that-

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include- .

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on-

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who-

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that-

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its-

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) Termination procedures. (1) The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(2) The Secretary or a Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice-

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the following October 1; and

(iii) Informs the school that it has 15 days to-

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request a hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date of receipt of the request. The presiding officer-

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the presiding officer, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) Effects of termination. A school that has its lending eligibility terminated under this section may not-

(1) Make further loans under this part unless it has entered into a new lending agreement with the Secretary under Sec. 682.601; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) Schools under the same ownership. If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by-

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1078-2, 1082, 1085)

Sec. 682.609 Remedial actions.

(a) The Secretary requires a school to repay to the Secretary funds paid by the Secretary to other program participants if the Secretary determines that the payment resulted, in whole or in part, from-

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) The Secretary's decision to require repayment of funds by a school, to withhold funds from a school, or to limit, suspend or terminate a school's GSL or PLUS Program participation, does not become final until the Secretary provides the school with written notice of the intended action and an opportunity to be heard. However, the Secretary may withhold payments from a school or suspend an agreement with a school prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to the Federal interest.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a school under this section is conclusive and binding on the school. (Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

Sec. 682.610 Records, reports, and inspection requirements for participating schools.

(a) General. Each school shall-

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR Part 668 in order to-

(i) Protect the rights of students and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with any specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) Loan record requirements. In addition to records required by 34 CFR Part 668, for each loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of-

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(6) In the case of a GSLP loan for which the borrower applies for interest benefits under Sec. 682.301, the data used to determine the student's adjusted gross family income and the student's expected family contribution, and the corresponding certification by the school to the lender;

(7) In the case of a GSLP loan-

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(8) A record of the student's job placement, if known.

(c) Student status reports. A school shall-

(1) Upon receipt of a student confirmation report form from the Secretary or a similar status confirmation report form from any guarantee agency, complete and return, within 30 days of receipt, that report to the Secretary or the guarantee agency, as appropriate; and

(2) Promptly notify the lender-

(i) When the school discovers that a student who has received a GSLP loan has ceased to be enrolled on at least a half-time basis and it does not expect to submit, within the next 60 days, its next student confirmation report to the Secretary or the guarantee agency;

(ii) When the school discovers that a PLUS Program loan has been made to or on behalf of a student who has been accepted for enrollment at that school but who fails to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) When the school discovers that a full-time student to whom a PLUS Program loan was made has ceased to be enrolled on a full-time basis.

(d) Record retention requirements. Unless otherwise directed by the Secretary, the school or its successors-

(1) Shall keep all records required under the regulations in this part for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after their completion copies of reports and other forms used by the school relating to the GSLP or the PLUS Program;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or his authorized representatives to those records and reports; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) Inspection requirements. Upon request, a school shall afford the Secretary, a guarantee agency, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the school's compliance with the Act and applicable regulations.

(f) Information sharing. Upon request, a school shall promptly provide a lender or guarantee agency with any information it has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(g) Reports to the Secretary. With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in Appendix A. Part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by Part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

Authority: 20 U.S.C. 1078-2, 1082, 1094)

(Reporting and recordkeeping requirements were approved by the Office of Management and Budget under control number 1840-0538)

Subpart G-Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

Source: 51 FR 40923, Nov. 10, 1986, unless otherwise noted.

Sec. 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the GSLP and the PLUS Program. The regulations in this subpart apply to a lender that violates any statutory provision governing the GSLP or the PLUS Program or any regulations, special arrangements, agreements, or limitations prescribed under the GSLP or the PLUS Program. These regulations apply to lenders that participate in a guarantee agency program as well as lenders that participate in the FISLP or the Federal PLUS Program.

(b) This subpart does not apply-

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(g)(1) of the Act or the definition of "lender" in Sec. 682.200;

(2) To a school's loss of lending eligibility under Sec. 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of-

(i) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act), which is governed by 34 CFR Part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR Part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders under other authorities.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.701 Definitions of terms used in this subpart.

The following definitions are used in this subpart:

Designated Departmental official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, or termination proceedings.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by the Secretary as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in Sec. 682.709.

(b) Effect of limitation: A limitation imposes on a lender-

(1) A limit on the number of total amount of GSLP or PLUS Program loans that a lender may make, purchase, or hold;

(2) A limit on the number of total amount of GSLP or PLUS Program loans a lender may make to, or on behalf of, students at a particular school; or

(3) Other reasonable requirements or conditions, including those described in Sec. 682.709.

(c) Effect of termination: After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to-

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if-

(1) The delay would harm the GSLP or the PLUS Program; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to a lender if the Secretary-

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parents, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period-

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) The Secretary provides, upon the request of the lender, an opportunity for the lender to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.705 Suspension proceedings.

(a) Scope. (1) A suspension removes a lender's eligibility under the GSLP and the PLUS Program, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the effective date of the suspension, unless-

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) Notice. (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice-

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct any alleged violations voluntarily.

(c) Hearing. (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and-

(i) Dismisses the proposed suspension; or

(ii) Notifies the lender of the effective date of the suspension.

(2) If the lender requests a hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who-

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary reviews the decision of the presiding officer. The Secretary affirms a decision of the presiding officer imposing a suspension unless it is clearly unsupported by the evidence. The Secretary affirms a decision declining to impose a suspension if the Secretary believes suspension is not warranted by the evidence. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.706 Limitation or termination proceedings.

(a) Notice. (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice-

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv), States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the limitation or termination should not take effect; and

(vii) Asks the lender to voluntarily correct any alleged violations.

(b) Hearing. (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and-

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who-

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with Sec. 682.706(b)(9), the Secretary-

(1) Sets a time period for the appealing party to submit additional written material, including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements;

(2) Sets a time by which the opposing party must respond; and

(3) Issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(b) Any party submitting material to the Secretary must provide a copy to each party that participates in the hearing.

(c) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSLP, the PLUS Program, students, or parents.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart are evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed in accordance with the regulations in this subpart at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary-

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSLP and the PLUS Program, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Sec. 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that-

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668, may not be considered for reinstatement as a GSLP or PLUS Program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary-

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request, or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSLP and the PLUS Program is reinstated subject to limita-

tions imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

Subpart H-Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Source: 50 FR 5515, Feb. 8, 1985, unless otherwise noted.

Sec. 682.800 General.

An Authority that issues tax-exempt obligations in order to make or acquire loans under the Guaranteed Student Loan (GSL) or PLUS programs, or to advance funds to another entity for those purposes, shall submit a Plan for Doing Business (Plan) to the Secretary. In order for the Authority, or the recipient of those funds from the Authority, to receive special allowance payments on those loans, the Secretary must approve the Plan. This subpart lists the requirements which must be addressed in the Plan, the procedures for its submission, and the documentation required with the Plan. The Plan must also include provisions that meet the standards established in this subpart.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.801 Definitions applicable to Subpart H.

The definitions contained in Sec. 682.200 apply to this subpart. In addition, the following definitions apply to this subpart:

Authority means any entity, public or private nonprofit, which may issue tax-exempt obligations in order to obtain funds to be used for the making or purchasing of GSL or PLUS loans. The term "Authority" includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, which may issue tax-exempt obligations. The term also includes any party authorized to issue such obligations on behalf of a governmental agency, and any non-profit organization that issues qualified scholarship funding bonds under 26 U.S.C. 103(e).

Bond-use period of an issue means the period in which the lendable proceeds of the obligation or obligations comprising the issue will be used to make or purchase student loans.

Issuing expense means the costs of issuing the obligation, including survey costs, advertising and printing costs, fees of financial advisors and counsel, initial fees of trustees, paying agents, certifying or authenticating agents, and similar expenses.

Loan or student loan means any loan made under the GSL or PLUS programs.

Lendable proceeds means that portion of the original proceeds as defined in 26 CFR 1.103-13(b)(2)(i) which is neither deposited in a reasonably required reserve or replacement fund as defined in 26 CFR 1.103-14(d), nor committed, under the terms of the indenture or other agreement governing the issue, to be used for debt service or administrative and servicing costs of the Authority.

Obligation means any interest-bearing debt or original issue discount debt incurred by an Authority pursuant to its borrowing powers. As used in this subpart, this term means only an obligation issued to acquire funds for financing or refinancing the making or purchasing of student loans.

Proceeds means that term as used in 26 CFR 1.103-13(b)(2).

Refunding issue means one described in 26 CFR 1.103-14(e)(2).

Service area means the geographic area in which the Authority may do business under the Plan.

Short-term obligation means an obligation with a maturity of 270 days or less.

Source of student loan credit means a party which may make or purchase student loans, or provide funds to be used for those purposes.

Tax-exempt obligation means any obligation, the income from which is exempt from taxation under the Internal Revenue Code of 1954.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.802 Provisions required in Plan.

(a) Each Plan submitted for the approval of the Secretary must contain provisions necessary to ensure that-

(1) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(2) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(3) The Authority shall not purchase student loans at a premium or discount amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition;

(4) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(5) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of, or who seek loans for a student to attend a school within, the service area of the

Authority;

(6) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under both the GSL and PLUS programs and the maintenance of existing lender commitments to the program;

(7) The Authority shall secure an annual audit of its loan program operations by a certified public accounting firm which will include a review performed in accordance with the audit standards found in Sec. 682.830 of this subpart; and

(8) The Authority will not issue tax-exempt obligations for amounts in excess of the unmet need determined according to this subpart for student loan credit.

(b) The Secretary approves the Plan if it is submitted in the manner described in Sec. 682.803, includes provisions needed to implement the requirements in this section and meets the standards set forth in this subpart.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.803 Submission of Plan for approval-required documentation.

An Authority shall submit with, or include in, each Plan submitted for the approval of the Secretary the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the Program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority has a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of a loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend, a school located within its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under both the GSL and PLUS programs and the maintenance of existing lender commitments to the program.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in Sec. 682.830 of this subpart.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information from which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0554)

Sec. 682.804 Amendments to Plan.

(a) After a Plan is approved, an Authority shall submit to the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that-

(1) An Authority amends any provision of a Plan which had previously been approved by the Secretary; or

(2) Any documentation or representation previously submitted pursuant to Sec. 682.803 has been revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0554)

Sec. 682.805 Approval of Plan.

(a) The Secretary promptly reviews a Plan submitted for approval to determine whether or not it is complete. If the Secretary finds that the information or documentation submitted in or with a Plan is not complete, the Secretary provides an explanation to the Authority of why the Plan is incomplete.

(b) The Secretary approves or disapproves the Plan within 30 days after receipt of a complete Plan submission.

(c) A complete Plan submission includes-

(1) A Plan which adopts the specific provisions listed in Sec. 682.802 of this subpart; and

(2) The documentation described in Sec. 682.803 of this subpart.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.806 Failure to comply with Plan.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: A decision by the Secretary under this section is currently subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

Secs. 682.807-682.809 [Reserved]

Sec. 682.810 Standards for provisions of Plans for Doing Business-Need for proposed tax-exempt obligation.

To implement the requirements of Sec. 682.802(a)(8), an Authority shall adopt provisions to determine, according to the standards, methodology, and procedures prescribed in secs. 682.812 through 682.815 and secs. 682.820 through 682.822, that the amount of the lendable proceeds of any proposed issue of tax-exempt obligations does not exceed the unmet need for student loan credit in its service area during the bond-use period of that issue. To make the determination, the Authority shall first estimate the need for student loan credit in its service area according to the standards described in Sec. 682.812, or, in the case of a refunding issue, in Sec. 682.820. The Authority shall then identify the credit resources available to meet that need, and estimate the amount of credit available from those resources, according to the standards described in Sec. 682.813. That portion of the estimated need that exceeds the credit available from these resources is the unmet need, as described in secs. 682.814 and 682.820. The Authority shall include in its Plan provisions to measure those elements which meet the methodology requirements in secs. 682.815 and 682.821. For each particular tax-exempt obligation, the Authority shall demonstrate to the Secretary its compliance with these requirements in the manner described in Sec. 682.822.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.811 Timing and advance repayment of tax-exempt obligations.

(a) General. An Authority may issue tax-exempt obligations in order to obtain funds-

(1) To make or purchase student loans, or provide funds to another for the making or purchasing of student loans;

(2) To retire an obligation issued to obtain funds for these purposes; or

(3) To retire an obligation issued to retire a prior retirement issue.

(b) Time of issuance. An Authority shall issue no tax-exempt obligation-

(1)(i) Earlier than six months before the bond-use period commences; or

(ii) If the obligation is part of a refunding issue, earlier than thirty days before it retires the prior obligation; and

(2) Except as provided in paragraphs (d) and (e) of this section, later than one year after the Secretary approves the determination of need for the obligation under Sec. 682.822.

(c) Bond-use period. (1) An Authority shall issue no tax-exempt obligation for which the bond-use period exceeds-

(i) One year, for those proceeds to be used to make loans; or

(ii) Two years, for those proceeds to be used to purchase loans.

(2) An Authority shall use proceeds of a refunding issue to retire the prior obligation no later than 30 days after the date of issuance of the refunding issue.

(d) Short-term obligations. (1) At any time after the approval of an issue and before the end of the bond-use period of that issue, an Authority may, without review by the Secretary, issue a short-term obligation in order to replace or refund-

(i) All or part of that approved issue; or

(ii) A short-term obligation issued to replace or refund all or part of that approved issue.

(2) Short-term obligations issued pursuant to this paragraph retain the same bond-use period as the approved issue, and must be retired in accordance with the provisions of paragraph (g) of this section.

(e) Credit support obligations. At any time and without regard to other provisions of this subpart, an Authority may issue an obligation to evidence disbursements made under a credit-support agreement, such as a letter of credit, and promptly used to retire all or part of an issue approved under this subpart.

(f) Resale of obligations. At any time and without regard to other provisions of this subpart, a party providing credit support to an Authority, or a marketing agent or similar party, may resell an approved obligation or a short-term obligation described in paragraph (d) of this section which it acquired at the demand of a previous holder of the obligation.

(g) Advance repayment. (1) Unexpended proceeds. (i) Except as provided in paragraph (g)(1)(ii) of this section, at the close of the bond-use period of an issue, an Authority shall promptly repay obligations comprising that issue with all lendable proceeds of that issue not expended in the bond-use period for the purposes in paragraph (a) of this section.

(ii) An Authority need not use unexpended lendable proceeds to repay its obligations under paragraph (g)(1)(i) of this section to the extent that the Authority can demonstrate an unmet need for the unexpended funds (in accordance with secs. 682.814 or 682.820, as appropriate) by means of-

(A) A justification for another issue; or

(B) A separate justification.

(2) Loan repayments. An Authority shall use all loan repayments to repay its obligations in accordance with the requirements of paragraph (g)(3) of this section. For purposes of this section, the term "repayments" includes all payments of principal, interest, and late charges received from borrowers and all payments on default, death, disability, and bankruptcy claims received from a guarantee agency or the Federal government.

(3)(i) An Authority shall use all available repayments on loans acquired with the proceeds of an issue to retire a portion of that issue no later than the earlier of-

(A) Receipt of loan repayments in the amount of at least 20 per centum of the lendable proceeds of the issue; or

(B) Four years after the date of issuance, provided that loan repayments in an amount of at least five per centum of the lendable proceeds of the issue have been received.

(ii) An Authority shall make subsequent repayments of obligations annually on the anniversary of the most recent repayment made pursuant to paragraph (3)(i) of this section, provided that loan repayments in an amount of at least five per centum of the lendable proceeds of the issue have been received since that repayment.

(iii) An Authority need not use to retire outstanding obligations an amount of loan repayments not exceeding the difference between-

(A) The amount of annual debt service due on obligations outstanding after the most recent redemption and an additional one-twelfth of that annual debt service; and

(B) The amount of repayments which the Authority expects to receive in the twelve months succeeding the most recent redemption.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.812 Estimating need for student loan credit.

(a) An Authority shall estimate the reasonable need for student loan credit in its service area during the bond-use period to be equal to-

(1) The student loan volume in that area for the most recent twelve-month period for which actual data is available multiplied by the number of years in the bond-use period; or

(2) An estimated amount of need for student loans for the bond-use period based on a statistical analysis of historical data and credible assumptions regarding changes in the bond-use period.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.813 Estimating resources available for student loan credit.

An Authority shall estimate the amount of credit available for student loan credit in its service area during the bond-use period to include credit from the following sources:

(a) Credit available from direct lenders. An Authority shall include the total net amount of new credit expected to be made available during the bond-use period in its service area to students by direct lenders other than the Authority without regard to expected purchases by secondary markets as either-

(1) The amount of new student loan credit extended in that service area during the most recent twelve-month period for which data is available by lenders other than the Authority, minus the amount of loans sold to any secondary market during that same period, plus any net increase in student loan credit expected to be made available in the service area by those lenders identified to the Authority by the Secretary; or

(2) The amount of new student loan credit which such lenders represent, or are deemed to represent, that they expect to make available, minus the amount of loans they expect to sell to secondary markets, duirng the bond-use period.

(b) Credit available from an Authority. An Authority shall include as an available resource, to the extent that no statutory, regulatory, or contractual provision bars their use during the bond-use period for new student loan credit, the estimated amount, as of the beginning of the bond-use period, of-

(1) Any unexpended lendable proceeds of prior issues;

(2) Any repayments on loans held by the Authority; and

(3) Any other liquid assets of the Authority.

(c) Credit available from secondary markets other than the Authority. An Authority shall estimate the total amount of credit expected to be made available in its service area from all secondary market sources. The amount of credit available from a secondary market is the amount of loans it expects to purchase in the service area over the bond-use period. In making this estimate, an authority shall consider the Student Loan Marketing Association to be an available resource.

(1) An Authority shall include as the total amount of expected loan purchases during the bond-use period by secondary markets active in its service area the sum of the following amounts of loans for borrowers in that area:

(i) Loans included in executed loan purchase contracts.

(ii) Loans included in loan purchase contracts under negotiation.

(iii) Loans included in neither executed loan purchase contracts nor contracts under negotiation which are held by lenders active in its service area to which a secondary market has made both-

(A) An individual solicitation, in writing, to enter into a contract for the purchase of specific types of loans at par or at a discount not exceeding one percent; and

(B) A commitment, in writing, to provide sufficient staff and administrative resources to enable the lender and the secondary market to close a loan purchase agreement within a reasonable time, not exceeding 90 days, from the receipt of the initial positive response of that lender to the solicitation.

(iv) Loans included in neither the actual nor proposed contracts described in paragraphs (c)(1) (i), (ii), and (iii) of this section which a secondary market estimates that it will purchase based on its purchase activity in that area during the most recent three-year period for which data is available.

(2) An Authority operating in a State in which the Student Loan Marketing Association is barred from purchasing loans shall include as an available resource the amount of loans that the Student Loan Marketing Association would be expected to purchase in the service area during the bond-use period if the Student Loan Marketing Association were not barred. The Authority shall deem that the Student Loan Marketing Association would purchase loans in the service area during the bond-use period in the same proportion to the projected student loan volume during that period in that area as the total amount of loan purchases by the Student Loan Marketing Association during the most recent twelve-month period for which data is available bears to the total amount of loans disbursed during that same period in all States except those which the Secretary has found to have barred the Association from purchasing loans during the most recent two years for which data is available. For purposes of this subpart, the Association is barred from purchasing loans in any State in which-

(i) Any State law or guarantee agency policy prohibits the Student Loan Marketing Association from purchasing loans or benefitting from the guarantee of the agency on student loans it purchases which were previously guaranteed by that agency;

(ii) Any requirement exists that loans guaranteed by a guarantee agency be serviced within that particular State; or

(iii) A guarantee agency fails to confirm in writing, upon request by the Association, that the full benefit of its guarantee continue to apply to loans previously guaranteed by that agency which are thereafter acquired by the Student Loan Marketing Association.

(3) A bar exists in a State until an Authority or other party eliminates the exclusionary policy or practice, or takes other action necessary to ensure that the Student Loan Marketing Association is no longer excluded, such as arranging with other agencies or organizations to offer in that area a loan insurance program under which the Student Loan Marketing Association can acquire loans guaranteed under the GSL and PLUS programs.

(d) Credit available to the Authority by means of taxable obligations. (1) An Authority shall estimate the amount of any funds reasonably available to the Authority from the Student Loan Marketing Association or other sources by means of taxable obligations. Credit is reasonably available by means of taxable obligations from such sources if-

(i) The Authority will have sufficient assets and revenues to meet the terms on which such credit can generally be obtained, in light of reasonable servicing and administrative costs to be incurred for the portfolio to be financed with that credit; and

(ii) Subject to paragraphs (d) (2) and (3) of this section, State law does not bar the Authority from issuing taxable obligations.

(2) An Authority which contends that State law prohibits it from issuing taxable obligations may, for periods specified in paragraph (d)(3) of this section, disregard credit otherwise available from that source if that Authority-

(i) Submits to the Secretary a written opinion of the State attorney general that State law prohibits the Authority from issuing obligations, the interest income of which is taxable under the Internal Revenue Code. To demonstrate for purposes of this subpart that State law prohibits such borrowing, the opinion must articulate the specific State constitutional provision, statute, or case law which prohibits such borrowing, and cannot rely upon any claim of Federal constitutional or statutory right as a basis for this interpretation of State law; and

(ii) Commits itself to exercise its best efforts to have introduced and passed by the State legislature during the sessions described in paragraph (d)(3) of this section any amendment necessary to enable the Authority to issue taxable obligations.

(3)(i) If State law specifically bars the Authority from issuing taxable obligations, the Authority may disregard this credit source in assessing unmet need for obligations issued before the 90th day after adjournment of that session of the State legislature which includes the effective date of these regulations, or, if none includes that date, the next session after that date.

(ii) If a provision of the State constitution specifically bars the Authority from issuing taxable obligations, the Authority may disregard this source in assessing unmet need for obligations issued within one year after the date described in paragraph (d)(3)(i) of this section.

(4) For purposes of this subpart-

(i) The terms on which credit can generally be obtained by means of taxable obligations are those financing charges, issuing expenses, investment, drawdown, and collateral requirements on which an amount of credit similar to that available from the proposed tax-exempt obligation is available from the Student Loan Marketing Association, or if more favorable, from either of at least two lenders of the Authority's own choosing; and

(ii)(A) Servicing and administrative costs to be incurred are reasonable to the extent that they are similar in amount and type to those determined in the annual audit of the Authority's operations to be-

(1) Reasonable and allocable to any portfolio of GSL or PLUS program loans held by the Authority which is similar to that portfolio which the Authority plans to acquire with the proposed tax-exempt borrowing; and

(2) Not disallowable under 34 CFR Part 74, Appendix C, Part II, Sections D-3, D-4, D-5, D-6, D-8, or Appendix F, Sections G-2, G-9, G-12, G-14, G-20.

(B) The Authority may not rely upon costs that cannot be justified as provided in this paragraph in demonstrating that it cannot meet the terms on which credit by means of taxable obligations is generally available.

(C) If the Authority expects that its servicing and administrative costs will differ in type and amount from those examined in the audit of the Authority most recently submitted to the Secretary, the Authority shall demonstrate that those costs are reasonable and allocable to its GSL or PLUS loan programs according to 34 CFR Part 74 Appendix C or F, as appropriate, and not attributable to any of the disallowed cost categories listed in this paragraph.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.814 Unmet need.

(a) Subject to paragraph (b) of this section, the amount of unmet need for student loan credit in the service area of the Authority is equal to that portion of the need for student loan credit estimated pursuant to Sec. 682.812 which exceeds the amounts of available credit estimated under Sec. 682.813.

(b) Special access credit programs. (1) In addition to or in lieu of any unmet need determined under paragraph (a) of this section, an additional amount of unmet need exists if credit which the Authority estimates to be otherwise available under Sec. 682.813-

(i) Will not be extended as loans to or for the benefit of particular classes of students because of prevalent lender limitations based on the school they attend, their place of residence, their academic year or course of study, the amount they wish to borrow, or a requirement that they or their parents have an existing customer relationship; or

(ii) Will not be made available through loan purchases by secondary markets active in that area because the terms or amount of solicitations by those secondary markets exclude loans which lenders active in that area wish to sell.

(2) The amount of unmet need under this paragraph is that amount of loans estimated in accordance with Sec. 682.815 which the Authority demonstrates-

(i) Will not be made or purchased because of those limitations or exclusions; and

(ii) Any additional amount needed to provide a reasonable cumulative surplus for the special access credit program portfolio.

(c) Overlapping service areas. (1) If the service area of an Authority overlaps the service area of any other Authority or Authorities, the amount of unmet need for which that Authority may justify the issuance of a tax-exempt obligation is that portion of the unmet need determined under this section which these Authorities concur is to be served by the program of the issuing Authority.

(2) The Authority proposing a new tax-exempt issuance shall obtain the concurrence of the other Authorities in its area that its program serves a specific amount of the unmet need identified in that area.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.815 Methodology for measuring unmet need-new issues.

An Authority shall include the steps in this section in the methods used to estimate the reasonable need for student loan credit and the amount of resources available to meet that need.

(a) Determining need for student loan credit. (1) In order to estimate reasonable need for student loan credit during the bond-use period pursuant to Sec. 682.812(a), an Authority shall-

(i) Determine from each guarantee agency doing business in its service area the amount of the total student loan volume in its service area for the most recent twelve-month period for which data is available; and

(ii) Multiply that figure by the number of years or fractions of years in the bond-use period.

(2) In order to estimate reasonable need for student loan credit during the bond-use period pursuant to Sec. 682.812(b), an Authority shall-

(i) Determine from each guarantee agency doing business in its service area the amount of the total student loan volume in that service area for the three most recent twelve-month periods for which data is available;

(ii) Analyze that data in light of reasonably supported economic and demographic projections along with other relevant data and assumptions to project the expected need for student loan credit during the bond-use period;

(iii) Submit its estimate of the expected need for student loan credit, with the documentation and analysis supporting the estimate, to the following organizations operating within its service area:

(A) The guarantee agency or agencies.

(B) The State postsecondary education planning entity (as designated by the State to conform with the requirements of section 1203 of the Higher Education Act of 1965, as amended (20 U.S.C. 1143)).

(C) The State's association of student financial aid officers; and

(iv) Secure from each organization listed in paragraph (a)(2)(iii) of this section a written concurrence that the Authority's estimate of need for student loan credit in its service area over the bond-use period is reasonable and justified, based on an independent review of the analysis, data, and methods used by the Authority in light of the expertise and experience of the organization and the information available to it.

(3) An Authority shall, as part of its estimate, identify, explain, and make any corrections warranted by the following:

(i) Any difference greater than five percent per annum between the totals of each of the data elements required in paragraph (a)(2) of this section, in-

(A) The fiscal year immediately preceding the date of the issue; and

(B) The bond-use period.

(ii) Any difference greater than five percent per annum between the totals of these data elements-

(A) As projected for any prior issues; and

(B) As actually occurring during the bond-use period for those issues.

(b) Determining available credit from direct lenders. (1) In order to estimate the amount of credit available within its service area from direct lenders during each year of the bond-use period pursuant to Sec. 682.813(a)(1) an Authority shall-

(i) Determine from each guarantee agency doing business in its service area and, if necessary, from other sources, including lenders and secondary markets-

(A) The amount of student loans made in that service area during the most recent twelve-month period for which data is available; and

(B) The amount of secondary market purchases for that same twelve-month period of loans made in that service area;

(ii) Deduct from the total determined under paragraph (b)(1)(i)(A) of this section the amount of loans-

(A) Made by the Authority during that period; or

(B) Purchased by secondary markets, including the Authority, as determined under paragraph (b)(1)(i)(B) of this section;

(iii) Determine from any lender identified by the Secretary to the Authority the net amount of additional new loans it expects to make in the service area during the first year of the bond-use period. That net amount is the amount of new loans in excess of any amount of its loans included in the total determined under paragraph (b)(1)(i)(A) of this section, minus that portion of the amount of loans it made or will make in that service area which the lender expects to sell during that first year of the bond-use period which exceeds the amount of its loan sales included in the amount measured under paragraph (b)(1)(i)(B) of this section;

(iv) Add the amount determined under paragraph (b)(1)(ii) of this section to the amount determined under paragraph (b)(1)(iii) of this section; and

(v) Multiply the amount determined under paragraph (b)(1)(iv) by the number of years in the bond-use period.

(2) In order to estimate the amount of credit available within its service area from direct lenders during the bond-use period pursuant to Sec. 682.813(a)(2), an Authority shall survey lenders reasonably expected to be willing to extend such credit in its service area. In this survey, the Authority shall solicit an estimate from the following lenders of the amount and terms of credit they expect to make available in its service area during the bond-use period:

(i) All direct lenders to students in the highest quartile, by loan volume, active in the service area during the most recent twelve-month period preceding the survey for which data is available.

(ii) A representative sample of all other direct lenders.

(iii) Such other sources as the Secretary may identify to the Authority.

(c) Determining available credit from secondary markets. In order to estimate the amount of credit available within the service area from secondary markets during the bond-use period pursuant to Sec. 682.813(c), an Authority shall survey secondary markets reasonably expected to extend such credit in its service area. In this survey, the Authority shall solicit an estimate from the Student Loan Marketing Association and all other secondary market sources known to the Authority to be purchasing or willing to purchase loans made in its service area.

(1) An Authority shall solicit from each of these secondary markets an estimate of the amount of loans made to borrowers in its service area that it expects to purchase during the bond-use period. This estimate must identify and include the following:

(i) The amount of such loans it has committed to purchase during the bond-use period pursuant to executed loan purchase contracts of any kind.

(ii) The amount of such loans included in loan purchase contracts under negotiation.

(iii) The amount of such loans held by lenders active in the service area for which that secondary market has made the written solicitation to enter into a loan purchase agreement and commitment to execute that agreement described in Sec. 682.813(c)(1)(iii), and the specific terms offered in that solicitation.

(iv) The amount of such loans which are not included within the terms of executed or proposed contracts described in paragraph (c)(1) (i), (ii), or (iii) of this section which the secondary market, based on its purchasing activity in that service area during the most recent three-year period for which data is available, expects to purchase during the bond-use period, and the data and assumptions used to make that estimate.

(2)(i) An Authority which pursuant to Sec. 682.813(c)(2) must estimate the amount of loans that would be purchased by the Student Loan Marketing Association shall contact the Secretary to obtain, for the most recent twelve-month period for which data is available, the total amounts of-

(A) Loans purchased by the Student Loan Marketing Association; and

(B) Student loans disbursed in all States except those in which the Secretary finds that SLMA was barred from purchasing loans at any time during the most recent two years for which data is available.

(ii) The proportion of loans which would be purchased by the Student Loan Marketing Association in the Authority's service area, for purposes of this paragraph, is deemed to be the quotient of the amount of loans determined under paragraph (c)(2)(i)(A) of this section divided by the amount determined under paragraph (c)(2)(i)(B) of this section.

(d) Determining available credit from taxable obligations. (1) To determine the availability of credit by means of taxable obligations, the Authority shall make a good-faith effort as described in this paragraph-

(i) To determine the terms on which such credit can be secured;

(ii) To assess its ability to meet those terms; and

(iii) Where it cannot meet the terms first offered, to negotiate any changes in those terms which would permit it to meet those terms.

(2) An Authority makes a good-faith effort to determine the terms on which credit can be secured on taxable obligations if it solicits the terms on which credit would be offered to it by written inquiry addressed (unless otherwise directed by that official) to the chief executive officer of-

(i) The Student Loan Marketing Association; and

(ii)(A) Two other parties known to the Authority to have extended or expressed an interest in extending such credit or underwriting an issue to secure such credit; or

(B) Two other credit sources which routinely offer similar or greater amounts of credit to commercial borrowers.

(3) An Authority makes a good-faith effort to assess its ability to meet the terms on which credit can be secured on taxable obligations if it analyzes the cash flow expected from the proposed portfolio under the terms of the financing offered as follows:

(i) Servicing costs are reasonable and expressed on a cost-per-account basis, with separate classifications, if needed, for differences in cost based on account status.

(ii) Only those administrative costs attributed to the proposed portfolio and reasonable as determined under Sec. 682.813(d)(2)(ii) are included.

(iii) Federal interest and special allowance payments are treated as received no later than 30 days after the end of the period for which they were billed.

(iv) Student loan repayments and reimbursements by guarantors are treated as received no later than the average number of days after the due date on which the Authority receives payments on its other portfolios, or, if it has no other, the average number of days experienced for all lenders, as determined by the Secretary.

(v) Average borrower account size of the proposed portfolio is not less than-

(A) The average size as of the date acquired by the Authority or the commencement of repayment status, whichever is later, of accounts acquired in the most recent three-year period; or

(B) For an Authority which has been in operation less than three years, the average size, measured as in paragraph (d)(3)(v)(A), of accounts it expects to acquire for that portfolio.

(vi) Costs of issuance are itemized and documented.

(vii) Any assumed increases due to inflation in administrative and servicing costs do not exceed the average annual increase in the Department of Labor's Consumer Price Index (CPI) over the most recent three-year period for which data is available.

(viii) Projections of the 91-day Treasury bill rate are equal to that rate used by the Secretary to calculate the rate of special allowance payments for the most recent quarter.

(ix) Short-term interest rates used to calculate reinvestment rates for the portfolio and for any other purpose are not less than 75% of the 91-day Treasury bill rate used in paragraph (d)(3)(viii) of this section.

(x) Drawdowns of funds under the proposed taxable financing are scheduled-

(A) On the same day and in the same amount as the loan purchases expected under that financing; or

(B) At the beginning of each month in which the Authority expects to make loans and in the amount expected to be loaned in that month.

(4) An Authority makes a good-faith effort to negotiate terms on which it can secure credit on taxable obligations if it-

(i) Promptly responds to any specific offer of terms;

(ii) Identifies in a timely manner to a party offering those terms any legal or contractual provisions governing its operations which impede its ability to meet the terms offered by that party; and

(iii) Promptly proposes reasonable alternatives or modifications to any terms of the offer to which it cannot legally or financially accede.

(e) Special access credit programs. (1) In order to prove need for a special access credit program because of lender limitations under Sec. 682.814(b)(1)(i), the Authority must establish the existence, scope and prejudicial effects of lender limitations on borrowers or potential borrowers by surveying schools and lenders in its service area. The Authority may do so by-

(i) Surveying a sample, representative by type, size, and location, of schools and lenders in its service area; or

(ii) Surveying all schools and lenders in its service area.

(2) The survey of the effects of lender limitations must identify at least-

(i) The incidence of lender limitations in its service area;

(ii) The specific types of lender limitations;

(iii) The number of affected students and potential students; and

(iv) The estimated amount of loans not made and loans made for less than the legal maximum because of these identified lender limitations.

(3) In order to prove need for a special access credit program because of limitations in the terms of a secondary market program as offered to lenders active in its service area under Sec. 682.814(b)(1)(ii), an Authority shall establish the existence and effect of those limitations by means of a survey of lenders active in its area. The survey must include-

(i) All direct lenders active in the service area in the highest quartile by loan volume during the most recent twelve-month period for which data is available; and

(ii) A representative sample of all other direct lenders.

(4) The survey of the effects of secondary market limitations must identify-

(i) The specific limitations, other than that of purchase at a discount not exceeding one percent, which preclude a secondary market making the solicitation and commitment described in Sec. 682.814(c)(1)(iii) from purchasing certain types or amounts of loans; and

(ii) The amount of loans held by lenders active in the service area which have received such a written solicitation and commitment that-

(A) Those lenders wish to sell to a secondary market; and

(B) Do not fall within the terms of the purchase contract offered in that solicitation.

(5) In order to prove a need for an amount of loans in excess of the amount of loans determined to be needed in paragraph (e)(1) of this section, an Authority shall perform a revenue analysis according to the requirements of paragraph (d)(3) of this section.

(f) Use of written inquiries. The Authority shall use written inquiries to solicit information from each school, lender, and secondary market source included in any inquiry or survey conducted under this section.

(g) Record retention. The Authority shall maintain and make available for inspection records of all written inquiries and of all responses and failures to respond to those inquiries for three years beyond the end of the bond-use period of the issue for which they were gathered.

(h) Evaluation of responses from direct lenders and secondary markets. (1) If a response to the survey inquiry of the Authority by a direct lender to students does not clearly state the lender's intentions, or if no response is received from such a lender, the Authority shall consider that lender as intending to make loans in the service area during the bond-use period on the same terms and in an annual volume equal to that amount of credit extended by that lender in the most recent twelve-month period for which data is available, increased or decreased according to the average annual rate of change in the total loan volume in that area over the most recent three-year period for which data is available.

(2)(i) If a response to the survey inquiry of the Authority by a secondary market does not clearly state both the amount of loans to borrowers in the service area of the Authority which that party expects to purchase during the bond-use period and the basis for that estimate in accordance with Sec. 682.815(c)(1), or if no response is received from that party, the Authority shall consider that secondary market as intending to purchase during each year of the bond-use period an amount of loans for borrowers in its service area equal to the amount of those loans it purchased in the most recent twelve-month period for which data is available, increased or decreased according to the average amount of annual change in that figure over the most recent three-year period for which data is available.

(ii) In determining for purposes of this estimate the amount of loans made for borrowers in its service area which were purchased by a secondary market, an Authority shall use information reasonably available from that secondary market, from appropriate guarantee agencies, and from the Secretary.

(3) If an Authority concludes that, in responding to its survey, a lender or a secondary market overestimated or underestimated its future activity in the service area by more than 5 percent, the Authority may revise the estimate of the respondent in light of-

(i) Recent performance by that respondent;

(ii) Past discrepancies between projection and performance by that respondent; and

(iii) Data and analyses which the Authority demonstrates will support a realistic estimate.

(i) Overlapping service areas. (1) If the service area of an Authority overlaps the service area of any other Authority or Authorities, the Authority proposing issuance of a tax-exempt obligation shall consult with each of those Authorities in order to obtain their written concurrence that assumptions and methodology used by the issuing Authority and the resulting estimates of need for student loan credit and resources available for student loan credit within the Authority's service area over the bond-use period are reasonable and justified, based on the concurring Authority's expertise and experience.

(2) The Authority proposing a new tax-exempt issuance shall obtain the concurrence of the other Authorities in its area that its program is to serve a specific amount of the unmet need identified in that area.

(3) If the issuing Authority cannot secure the concurrences described in paragraphs (c) (1) and (2) of this section, the Authorities shall select a neutral arbiter to resolve their differences.

(Authority: 20 U.S.C. 1082, 1087-1)

Secs. 682.816-682.819 [Reserved]

Sec. 682.820 Unmet need-refunding issues.

(a) An Authority shall determine whether the lendable proceeds of any proposed refunding issue exceed the unmet need for student loan credit in its service area by dividing the amount of the lendable proceeds into two portions, and assessing the availability of credit from the resources described in Sec. 682.813 to meet the need for which each of these portions is to be used in the following manner:

(1)(i) An Authority shall determine according to paragraph (a)(1)(ii) of this section whether an unmet need exists for that portion of the lendable proceeds of a proposed refunding issue equal to the sum of-

(A) The amount of the outstanding balances, including principal and interest, of all student loans made or acquired with proceeds of the issue to be refunded; and

(B) The amount of the issue to be refunded spent or to be spent on-

(1) Issuing expenses and debt service for the prior issue; and

(2) Administrative costs and servicing expenses for loans made or acquired with the proceeds of the prior issue.

(ii) An Authority establishes an unmet need exists for the amount determined in paragraph (a)(1)(i) of this section, if credit is not reasonably available by means of taxable obligations to refund that portion of the prior issue.

(2) An Authority demonstrates that an unmet need exists for that portion of the lendable proceeds of a proposed refunding issue in excess of the amount included in paragraph (a)(1)(i) of this section, only to the extent that the Authority could demonstrate under Sec. 682.814 that an unmet need exists for a new issue.

(b) An Authority shall comply with the provisions of Sec. 682.811 regarding the timing and use of proceeds of refunding issues.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.821 Methods for measuring unmet need-refunding issues.

(a) The Authority shall use the methods prescribed in Sec. 682.815 to measure the unmet need for that portion of the proceeds of a refunding issue treated as a new issue under Sec. 682.820(a)(2).

(b) An Authority shall use the methods prescribed in Sec. 682.815 (d), (f), and (g) to measure unmet need for that portion of the proceeds of a refunding issue described in Sec. 682.820(a)(1).

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.822 Required documentation and procedures for approval of justification of need for a tax-exempt obligation.

(a) An Authority shall, for any proposed issue of tax-exempt obligations-

(1) Compile and maintain a record of any survey, the responses to the survey, the sources of any other data, and the assumptions on which it bases its estimates of the reasonable need for student loan credit and the amount of credit available from sources of student loan credit;

(2) Submit for approval by the Secretary, no earlier than six months nor later than 30 days before the proposed date of issue-

(i) A statement of the expected amount and terms of the issue;

(ii) A copy of any official statement regarding the issue, statements of sources and application of funds for the proposed issue and any prior issue (unless already submitted), and a copy of the most recent audit of the Authority's activities;

(iii) An explanation of the estimated need for student loan credit and resources available for student loan credit in that service area, determined according to the standards established in this subpart;

(iv) A detailed description of the data and assumptions on which its estimates of need and available resources are based; and

(v) If the Authority has received an offer of taxable financing, copies of the contract offered, all correspondence between the Authority and the offeror, any cash flow analyses supplied to the Authority by the party offering the credit, and any other supporting analyses and explanations provided by the party offering the credit or developed by the Authority of the feasibility for the Authority of the taxable financing offered.

(3) If the Authority proposes to issue a tax-exempt obligation to meet an unmet need determined under Sec. 682.814(b) (Special access credit programs), the Authority shall submit, along with the information listed in paragraph (a)(2) of this section-

(i) A certification that it will use that portion of the proceeds of the issue justified under Sec. 682.814(b)(1) solely to make available loans for that class of borrowers determined to have limited access to student loan credit, or acquire loans subject to those secondary market limitations;

(ii) A specific plan of action to implement this certification; and

(iii) A copy of any revenue analyses performed with regard to the need for issuance of an amount necessary to acquire loans other than those included in paragraph (a)(3)(i) of this section in order to assure a reasonable cumulative surplus for the special access credit program portfolio.

(b)(1) The Secretary approves the determination of the Authority that the lendable proceeds of a proposed tax-exempt obligation do not exceed the unmet need for student loan credit for the bond-use period in that service area if the documentation submitted under paragraph (a) of this section demonstrates a reasonable estimate based on the standards and methods in this subpart of both the need for student loan credit and of the amount of such credit available from other resources.

(2) The Secretary approves the justification of the Authority within 30 days after he receives documentation specified in this section which establishes an unmet need for a tax-exempt obligation.

(3) The Secretary may disapprove a justification, or may require additional information, if documentation submitted by an Authority does not establish an unmet need for a tax-exempt obligation.

(4) If an Authority submits a single justification for an issue to be used to finance acquisition of new loans and to refund outstanding obligations, the Secretary may treat the submission as two separate requests.

(c)(1) Any Authority adversely affected by a decision of the Secretary concerning whether that Authority will issue tax-exempt obligations for amounts in excess of the unmet need determined according to this subpart H may request that the Commissioner of Internal Revenue review that decision. The review by the Commissioner of Internal Revenue will not affect the exemption from income taxation of interest on any student loan bond or any issuer of such bonds.

(2)(i) A request for review by the Commissioner must be submitted to the Secretary and must include the following information:

(A) The Authority's request for review.

(B) A summary statement of facts from the Authority concerning its need to issue tax-exempt obligations and a memorandum of law supporting its position.

(ii) This information, together with a copy of the Secretary's decision and, if not included in the decision, a summary statement of facts and a memorandum supporting that decision, will be forwarded to the Commissioner of Internal Revenue. The Authority may not present information to the Commissioner that had not been submitted to the Secretary prior to the Secretary's decision (other than the information specified above).

(3)(i) The Commissioner will review the Secretary's decision in light of the applicable regulations of the Department of Education and determine whether that decision was reasonable. The Commissioner will review questions of law concerning the need to issue tax-exempt bonds arising under-

(A) Section 682.810, relating to standards for provisions of plan for doing business;

(B) Section 682.811, relating to timing and advance repayment of tax-exempt obligations;

(C) Section 682.812, relating to estimating need for student loan credit;

(D) Section 682.813, relating to estimating resources available for student loan credit;

(E) Section 682.814, relating to unmet need;

(F) Section 682.815, relating to methodology for measuring unmet need;

(G) Section 682.820, relating to unmet need-refunding issues;

(H) Section 682.821, relating to methods for measuring unmet need-refunding issues; and

(I) Section 682.822, relating to required documentation and procedures for approval of justification of need for a tax-exempt obligation.

(ii) The Commissioner's review will be based exclusively on the information submitted pursuant to paragraph (c)(2). The Commissioner will not review findings of fact. An Authority is not entitled to a conference with representatives of the Commissioner.

(4) Within 60 days of the Secretary's receipt of a request for review by the Commissioner, the Commissioner will issue a report to the Secretary and the Authority. An Authority may waive the 60-day requirement for issuance of a report. The report will contain an advisory opinion as to whether the Secretary's decision was reasonable. The Secretary is not bound by the Commissioner's report. Once a decision of the Secretary has been reviewed by the Commissioner, no further review will be given to any aspect of that decision by the Commissioner. A report issued pursuant to this paragraph may not be used or cited as precedent and is not subject to further administrative or judicial review.

(5) Upon receipt of a written appeal report from the Commissioner of Internal Revenue, the Secretary will review his decision relating to the Authority in light of that report. The Secretary will issue a final decision to the Authority within 30 days of receipt of the report of the Commissioner of Internal Revenue.

(Authority: 20 U.S.C. 1082, 1087-1; Pub. L. 98-369, Sec. 646, 98 Stat. 941 (1984))

(Approved by the Office of Management and Budget under control number 1840-0554)

Sec. 682.823 Sanctions for material misrepresentation regarding unmet need.

(a) If at any time the Secretary determines that the submission for approval required under Sec. 682.822 contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section-

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in Sec. 682.806 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

Secs. 682.824-682.829 [Reserved]

Sec. 682.830 Audit standards.

The Authority shall have an annual financial and compliance audit by an independent certified public accounting firm of its loan and/or loan purchasing program. The audit shall be conducted in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office (GAO) publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. The Authority shall submit a copy of the audit report within 30 days after the completion of such report to its regional office of the Education Department's Office of Inspector General.

(a) The audit must examine the activities of the Authority for compliance with the provisions of the Plan, and must specifically articulate, with appropriate substantiation, its conclusions regarding compliance with each of the provisions of Sec. 682.802 and with the Plan of the Authority.

(b) The audit must also examine the expenditures of the Authority using the cost principles found in Appendix C of 34 CFR Part 74 if the Authority is an agency or instrumentality of a State or local government, or Appendix F of that Part if the Authority is a non-profit corporation, as follows:

(1) The GSL and PLUS loan programs of the Authority are treated as the Federal grant or contract with regard to which costs are allocated.

(2) All costs incurred by the Authority are attributed to a cost category identified in the appropriate appendix.

(3) Each cost is examined to determine whether it is reasonable and allocable to the GSL and PLUS loan programs of the Authority.

(4) Although costs must be attributed, where warranted, to categories of costs characterized in that Appendix as unallowable, no determination is to be made that a cost is disallowed merely because such cost was one for which the Appendix requires advance approval by the Secretary or because the Appendix classifies that cost as unallowable.

(Authority: 20 U.S.C. 1082, 1087-1)

Appendix A to Part 682-Standards for Acceptable Refund Policies by Participating Schools

Pt. 682, App. A

For purposes of Sec. 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students. The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) Institutions should seek consumer views in the process of establishing and amending charge and refund structures. Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students. Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students. Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) The institutional tuition refund policy for an academic period should include the following minimum guidelines:

A. The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

B. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error. Penalty charges, such as those involving late registration fees, change of schedule fees, or late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer. A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) Institutions should pay or credit refunds due on a timely basis. The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

[51 FR 40926, Nov. 10, 1986]

Appendix B to Part 682-Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution for 1986-87

Pt. 682, App. B

If authorized under the provisions of Sec. 682.301(f)(2)(ii), an institution may use the following tables to determine the student's expected family contribution.

For purposes of the four tables-

"Dependent student" means a student who does not qualify as an "independent student";

"Independent student" is defined in 34 CFR 668.la; and

"Adjusted gross income" means the income, as defined in section 62 of the Internal Revenue Code, received in 1985.

Table A.-Expected Family Contribution for a Dependent Student From a Two-Parent Family-1986-87

For a dependent student from a two-parent family, the educational institution determines the student's expected family contribution according to Table A. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table A, "Family members" includes the student, the student's spouse and their dependents, and the student's mother and father and their dependents. If the family includes a stepparent whose income is included in the adjusted gross family income, family members also includes the stepparent and the dependents of the stepparent.

Table A is based on the following assumptions:

o One of the two parents is employed.

o No assets are considered.

o All of the family income was earned by the employed parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following-

-Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;

-F.I.C.A. (Social Security) for one wage earner:

-Average State and other taxes (8%); and

-A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because those living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

insert illus. 713

insert illus. 714

insert illus. 715

insert illus. 716

insert illus. 717

Table B.-Expected Family Contribution for a Dependent Student From a One-Parent Family-1986-87

For a dependent student from a one-parent family, the educational institution determines the student's expected family contribution according to Table B. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecodary educational institution.

As used in Table B, "Family members" includes the student, the student's spouse and their dependents, and the student's parent and the parent's dependents.

Table B is based on the following assumptions:

o The parent is employed.

o No assets are considered.

o All of the family income was earned by the parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following-

-Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as head of household;

-F.I.C.A. (Social Security) for one wage earner;

-Average State and other taxes (8%);

-An employment allowance of 35% of income, to a maximum of $2,000; and

-A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because the living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

insert illus. 720

insert illus. 721

insert illus. 722

insert illus. 723

insert illus. 724

Table C.-Expected Family Contribution for a Married Independent Student-1986-87

For a married independent student, the education institution determines the student's expected family contribution according to Table C. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary education institution. The contributions set forth in Table C are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table C, "Family members" includes the student, the student's spouse and their dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

-Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;

-F.I.C.A. (Social Security) for one wage earner; and

-Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of attendance.

insert illus. 726

insert illus. 727

insert illus. 728

insert illus. 729

insert illus. 730

Table D. Expected Family Contribution for a Single Independent Student-1986-87

For a single independent student, the educational institution determines the student's expected family contribution according to Table D. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table D are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table D, "Family members" includes the student and the student's dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

-Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households;

-F.I.C.A. (Social Security) for one wage earner; and

-Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses for the student and his or her family because those expenses are included in the student's cost of attendance.

Insert Illus. 732

Insert Illus. 733

Insert Illus. 734

Insert Illus. 735

Insert Illus. 736

[51 FR 12766, Apr. 15, 1986]

Appendix C to Part 682-Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Pt. 682, App. C

Note: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" herein refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to GSLP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods. Finally, references to sections of the regulations published on September 17, 1979 (44 FR 53916) are so noted. All other citations refer to the current regulations.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.[1]

These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979, regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually, See 44 FR 53916 (September 17, 1979). However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5), (6), and 34 CFR 682.517(g) (1979), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

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[1] All references to the program regulations are to Part 682 of Title 34 of the Code of Federal Regulations (34 CFR Part 682).

Due Diligence

Except as provided in 34 CFR 682.509(e)(3) (1979), collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period (See 34 CFR 682.509(e)(3), (1979), the loan entered repayment prior to September 4, 1985 (see 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. See 34 CFR 682.510(b)(ii) (1979). One exception to this rule is as follows: if the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time. Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forebearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with the original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's rights to receive interest and special allowance payments is addressed in Section I.B. 1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing

Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest and Special Allowance Repayment and Certification Required as a Condition for the Secretary's Recognition of a Cure. The Secretary has commenced a concerted effort to recoup all excess interest and special allowance payments made on loans involving due diligence or timely filing violations. Accordingly, the Secretar will not recognize cures for such violations until the lender has filed an executed Interest and Special Allowance Certification Form (Attachment A) with the Division of Certification and Program Review of the regional office responsible for the State in which the lender maintains its principal place of business, Additionally, the lender must enclose a photocopy of the certification with each "cured" claim it files.

4. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations only of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

5. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied solely for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

6. Treatment of Accrued Interest on "Cured" Claims-a. Due Diligence Violations. For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the end of the 120/180 day default period that culminated in default,and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

7. Documents to be Submitted with "Cured" Claims. The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new OE Form 1207.

For all "cured" claims, the lender must submit:

o For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original OE Form 1207 and all documents showing the reason(s) for the original rejection;

o All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;

o A new OE Form 1207;

o All documents showing that the lender has complied with the applicable cure procedures and requirements; and

o A copy of the Interest and Special Allowance Certification form (Attachment A).

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request pre-claims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) the lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(6); or

(b) the lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g. copies of the checks) with the claim.

2. Borrower Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims-

a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see Section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(6), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "8-Hour" collection letter, on the lender's letterhead. (See Attachment B).

b. Borrower Deemed Current Under Certain Circumstances. If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.507 and the timely filing requirements set out in 34 CFR 682.511.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph, on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(ii) A completed "Certification of Borrower Location" form (Attachment C).

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirement (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in Section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, except in connection with the certification described below, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender knows involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and all timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1968. A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A Lender must make the repayments of interest and/or special allowance discussed in II.C, above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported in a format similar to that in Attachment D, and must not be reported on the normal Lender's Request for Interest and Special Allowance (ED Form 799) submission. Lenders are requested not to send a check with the adjustment, the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. The adjustment must state the quarters for which the adjustment is being made, and the total dollar amounts of all loans involved in the adjustment. In addition, for five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s) repaid, the violation(s) giving rise to the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating th overbilled amount. See 34 CFR 682.515(a)(2). Completed adjustment forms should be sent to the following address: Student Loan Processing Center, P.O. Box 2640, Norfolk, Virginia 23501.

Attachments.

Attachment A-Interest and Special Allowance Certification Form

I, (name) XXXXXX, as a duly authorized official of (lender name and address) XXXXXX, hereby certify on behalf of this institution as follows:

(1) After consulting with all appropriate employees, agents, and servicers of this institution responsible for the collection of, and the filing of claims on, FISLP loans. I have

determined that this institution has not knowingly delayed filing claims on FISLP loans evidencing violations of the due diligence, timely filing or other requirements for the purpose of continuing to bill the Secretary of Education or his predecessors for interest benefits or special allowance thereon, nor will this institution do so in the future.

(2) This institution will thoroughly review all FISLP loans for which claims were denied for violation of the due diligence in collection or timely filing regulations, 34 CFR 682.511 and .516 (1979) respectively or the current regulations, 34 CFR 682.507 and 511, respectively. The purpose of this review will be to determine how much interest and special allowance the Secretary has paid this institution on these loans for the period(s) during which they were uninsured due to these violations. This institution will repay any and all such amounts so determined by way of an adjustment to one of the next two quarterly interest and special allowance billings (ED Form 799).

(3) This institution will retain all records and upon request will provide the Secretary of Education with all information required by Bulletin L-77a in connection with repayment of interest and special allowance overbillings

Signature of Employee

Date

Lender identification Number

Insert illus. 0338

Insert illus. 0339

Insert illus. 0340

[51 FR 40927, Nov. 10, 1986]

APPENDIX--SUMMARY OF COMMENTS

June 5, 1989

Section 682.410 Fiscal, administrative, and enforcement requirements

Comments: Several commenters supported the Secretary's proposal to establish a default rate that would trigger a guarantee agency's review of a school. However, many commenters suggested that the 15% default rate trigger was too low and should be increased to reduce the burden imposed on schools and agencies by this requirement.

Discussion: A change has been made. The Secretary has revised the NPRM by increasing from 15% to 20% the default rate that triggers a guarantee agency program review of a school. The final rule also excludes from mandatory review any school that is subject to a default management plan imposed by the Secretary under 34 CFR 668.15, and any school whose default rate of over 20 percent is not based on at least one cohort of loans entering repayment in a single fiscal year that totals $100,000 or more. These revisions significantly reduce the number of program reviews that an agency would have been required to perform under the NPRM while preserving the effectiveness of this requirement as a default reduction tool.

The Secretary notes that, as guarantee agencies have previously been informed, the Department is receptive to proposals from individual guarantee agencies to employ specific selection criteria for program reviews that differ from the "top ten/2%" program review criteria in current Sec. 82.410(c)(1)(ii) (A) and (B). If the Secretary is satisfied that an agency's proposed criteria represent an effective approach to the selection of schools for reviews, he will grant that agency a waiver from those provisions.

Comments: Several commenters questioned the guarantee agencies' expertise to conduct program reviews of schools. Some commenters suggested that the reviews should be performed by professionally-trained auditors through program reviews by the Secretary or independent auditors hired by schools to review other Federal programs.

Discussion: No change has been made. Although the Secretary intends to increase Federal lender and school reviews, it is the Secretary's intent that guarantee agencies can and should assume a major responsibility for monitoring their program participants. The Secretary has provided guarantee agencies with extensive training in program review requirements and has developed a comprehensive site review guide for agency use.

Comments: One commenter recommended that the Secretary include a provision that would exempt from guarantee agency review any school that had lowered its default rate to below 15% even if its default rate exceeded 15% in the immediately preceding year.

Discussion: No change has been made. The Secretary believes that the increase from 15% to 20% in the default rate that triggers a guarantee agency review adequately addresses this concern.

Comments: Two commenters supported the requirement of guarantee agency program reviews of schools with excessive default rates, but thought that the review should be limited to the GSL, SLS, and PLUS programs, and should not include other Title IV programs.

Discussion: No change has been made. The provision requiring guarantee agency reviews of schools with fiscal year default rates in excess of 20% applies only to the GSL, PLUS, and SLS programs.

Comments: Several commenters questioned which agency would conduct the compliance program review for schools that deal with several guarantee agencies.

Discussion: No change has been made. An agency may either conduct a joint review of a school with another agency or establish a reciprocal agreement with the other agency. Under a joint review or a reciprocal agreement, each participating agency is responsible for the quality of the review. The Secretary recommends that all reciprocal agreements state that the performing agency will conduct the review in accordance with the OSFA site review guides, and that, as required, any unique requirements of each agency whose review response is to be satisfied by a review under the agreement will be included in each such review.

Section 682.411 Due diligence by lenders in the collection of guarantee agency loans

Comments: Some commenters recommended that, rather than requiring the lender to provide a copy of each preclaim assistance request to the school for attendance at which the loan was made, the lender should be allowed to provide this information to the last school attended by the borrower. The commenters noted that the last school attended by the borrower could provide more recent information to assist the lender in its collection efforts.

Discussion: No change has been made. The requirement that a lender provide a school with a copy of the preclaim assistance request is designed to alert the school of a potential default by one of its students, and to allow the school an opportunity to act in a timely manner to avert a default. Fairness requires that the school against whom a default will be charged have the opportunity to make a diligent effort to contact the borrower to encourage repayment.

Comments: Some commenters suggested that lenders be allowed to provide a periodic list to the school of delinquent borrowers for which the lender has requested preclaim assistance from the guarantor. Other commenters suggested that the guarantors, rather than lenders, provide this information to schools.

Discussion: A change has been made. The final regulations require the lender to notify the school within 30 days after it requests preclaim assistance. In this way, the regulations allow time for guarantors wishing to do so to provide schools with this notice on lenders' behalf, through the use of periodic lists. However, the Secretary believes that prompt notice to the school is necessary for any actions taken by the school to be meaningful in averting defaults, and is therefore requiring that notice reach the school within 30 days of the date of the lender's preclaim assistance request.

Section 682.604 Processing the borrower loan proceeds and counseling borrowers

Comments: Many commenters proposed that the lender, not the school, be responsible for counseling the student prior to the disbursement of the loan proceeds to the institution.

Discussion: No change has been made. The Secretary has declined to impose the responsibility of in-person counseling on the lender because the distance between many lenders and the borrowers they serve is often great. The Secretary believes that since a school will typically be in a better position than the lender to engage in face-to-face counseling, it is the most appropriate entity to provide entrance counseling. Moreover, lenders are already required to provide detailed disclosures to borrowers at the time of loan disbursement regarding the borrower's rights and obligations on GSL and SLS loans.

Comments: Several commenters indicated that they believe entrance counseling is redundant and ultimately ineffective because, in their view, early counseling does not make an impression on the student and does not significantly reduce defaults. Many other commenters supported the requirement of entrance counseling as an effective default reduction measure.

Discussion: No change has been made. The Secretary believes, and the experience of many schools confirms, that improving a borrower's understanding of the terms and conditions of the loan and impressing upon the borrower the importance of meeting his or her repayment obligations, at the time of receipt of loan proceeds, helps greatly in reducing defaults.

Comments: Several commenters suggested that the school be given the flexibility to schedule entrance counseling throughout the semester, or at least prior to the student's second loan disbursement, to avoid scheduling all counseling sessions with loan recipients during the registration period, when a substantial burden is already being imposed on the school's administrative resources.

Discussion: No change has been made. The Secretary believes it is imperative for students to receive loan counseling at, or prior to, the receipt of a GSL or SLS loan. The linkage of this counseling with the receipt of loan funds will impress upon the borrower the importance of the obligation to repay the money he or she is about to receive, thereby lessening the risk of default.

Comments: Several commenters recommended that schools be allowed to use videotape presentations to counsel their students. Some commenters suggested that a videotape presentation followed up by a question and answer period with a financial aid officer would be an effective and efficient way to counsel borrowers.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the NPRM to allow for videotape presentations, and to require that the school provide each borrower an opportunity, after the entrance counseling session, to obtain answers to questions he or she may have regarding the loan.

Comments: Many commenters believed that requiring entrance counseling is too burdensome and costly for a school with a small financial aid staff and a large number of loan recipients. Other commenters expressed concern about the difficulty centralized financial aid offices would have in meeting with loan recipients at remote branches of the school, and suggested that the school be paid an administrative allowance to cover the extra burden.

Discussion: No change has been made. The Secretary believes that an institutional financial aid office can inexpensively reach its loan recipients through the use of group counseling sessions or videotapes.

Comments: One commenter recommended that the requirement in the NPRM that students in undergraduate non-baccalaureate vocational training programs be advised that they are obligated to repay their loans regardless of the outcome of their enrollment in the program, should be expanded to apply to all programs of study.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the regulations to make this requirement applicable to all programs of study.

Section 682.605 Determining the date of a student's withdrawal

Comments: Several commenters indicated that the proposed change to Sec. 82.605(a) requires clarification.

Discussion: No change has been made. The amendment to Sec. 82.605(a) simply clarifies that the date of a student's withdrawal, calculated under

Sec. 82.605(b), only relates to the institution's reports to lenders and to the date on which the institution's duty to pay a refund arises, not to the withdrawal date used for refund calculations. For this latter purpose, Sec. 82.604 uses the student's last recorded day of attendance as 34 CFR 668.22 has done since January, 1988.

Section 682.606 School refund policy

Comments: Many commenters objected to the proposed amendment to Sec. 82.606 requiring a school to employ a pro rata refund policy for a student receiving or benefiting from a GSL, SLS, or PLUS program loan who withdraws prior to the completion of the academic period for which the loan is made. These commenters believe that this requirement represented an unwarranted Federal intrusion into a school's administrative practices and would impose a significant increase in the administrative burden involved in refund calculations. Numerous commenters also argued that a pro rata refund was unfair in light of the substantial "up front" costs incurred by schools in enrolling a student and in offering a program that does not appreciably change when a student withdraws from school. A number of commenters argued that their current institutional refund policies, developed using standards approved by their accrediting agencies, are fair and equitable and do not unfairly penalize dropouts or contribute to loan defaults. Many commenters noted that the loss of revenue to the school that would result from the increased volume and dollar amount of refunds calculated using a pro rata policy would inevitably be passed along to students in the form of increased tuition costs. Several commenters suggested that the availability of a pro rata refund would encourage a student to withdraw when he or she encounters academic or financial difficulties. Several commenters recommended restricting the use of a pro rata policy to high default schools since the Secretary, in announcing the proposed rules, noted the linkage between a high level of dropouts and defaults. Some commenters recommended that the Department should not regulate the refund policy applicable to students who complete at least one half of their programs to reduce the administrative burden on schools and the intrusiveness of the rule, and in recognition both of the "up front" costs argument and the inapplicability of the "drop out reduction" rationale to a student that completes a substantial portion of the program before dropping out.

Discussion: A change has been made. Although the widely used practice of over-enrollment and the ability of many schools to quickly replace a dropout with a new enrollee militate strongly against the "up front costs" argument, the Secretary is requiring the use of a pro rata refund policy only when the default experience of the school requires that step to maintain GSL, SLS, and PLUS program integrity. Accordingly, this provision has been revised to require the implementation of a pro rata refund policy only by schools with default rates above 30 percent. Any school with a default rate at or below 30% must continue to use fair and equitable refund policies as defined in existing regulations. Further, the Secretary believes that the prospects for default are greater among those students who withdraw early in their programs, and that the aim of this rule should therefore be to remove the incentive for a school to enroll a student lacking a reasonable prospect for completing his or her program of study. The Secretary has accordingly revised the proposed rule to require the use of a pro rata policy only for a student whose withdrawal date occurs prior to the halfway point of the student's program, or the end of the first six months of the student's program, whichever is earlier. The Secretary believes that this targeted application of the pro rata refund rule will achieve the goals of the rule with a minimum of adverse effects. Also, the Secretary has revised the rule to permit the school to round upward to the nearest 10 percent the portion of the program deemed to have been completed by a student, to reduce administrative burden.

Comments: Several commenters from public institutions indicated that State law prevents them from applying a pro rata refund policy.

Discussion: No change has been made. The Secretary considers the use of a pro rata refund policy by those schools with default rates above 30 percent to be a necessary and appropriate administrative requirement for participation in the GSL, SLS, and PLUS programs. Therefore, schools that are subject to this requirement are required to implement a pro rata refund policy if they wish to continue to participate in those programs, regardless of the requirements of State law.

Comments: Many commenters objected to the imposition of a pro rata refund policy on the grounds that it would create inequities between loan recipients and students who do not receive loans or who do not receive any Title IV aid. Some commenters felt that the proposed regulations would force schools to establish multiple refund policies. Others considered that they would, as a matter of equity, be forced to apply a pro rata refund policy to all students. A number of commenters asserted that any refund policy mandated by the Secretary should encompass all students at an institution.

Discussion: No change has been made. The Secretary's legal authority to mandate refund policies at school is limited to students benefiting from GSL, SLS, or PLUS loans.

Comments: Some commenters argued that the implementation of a pro rata refund policy would have little impact on the default rate at a school, particularly if the school continues to be permitted to apply refund amounts to other sources of aid before returning loan funds to lenders. Other commenters indicated that, since students often use loan funds for non-institutional costs, a pro rata refund policy affecting only direct institutional costs, may result in minimal increases in refunds for many students.

Discussion: No change has been made. These final regulations require high default schools to take steps, such as the implementation of a pro rata refund policy, to address the problem of defaults by dropouts. The primary purpose of the pro rata refund requirement is not to increase the dollar amount of loan funds returned to the lender, but to remove the incentive for high default schools to enroll students who are inadequately prepared and are therefore likely to quickly drop out and default. This rule also will provide an incentive for schools to take steps on their own to improve their completion rates.

Comments: A number of commenters suggested various measures to either complement or replace the implementation of the pro rata refund policy. Some commenters suggested that loans should be awarded incrementally as the student progresses through the academic term or that the aid be awarded after the student has successfully completed the term. Others felt that lenders should be required to disburse Part B loans according to dates recommended by the school. Still other commenters suggested requiring credit-worthy endorsers as a way to reduce defaults.

Discussion: No changes have been made. Implementation of these suggestions would require statutory amendments and therefore does not fall within the scope of these final regulations.

Comments: Many commenters maintained that the administrative fee that the school would be allowed to retain, pursuant to Sec. 82.606(c)(1), would not cover all administrative expenses. Some suggested raising the amount to as much as $500.

Discussion: A change has been made. The revised rule allows a school to retain at least 10 percent of tuition and fees paid by a student that attends school at all during the loan period, in addition to the $100/5% administrative fee.

Section 682.607 Payment of a refund to a lender

Comments: A number of commenters stated that students often do not officially withdraw. Consequently, the school may not become aware of the student's withdrawal until the start of a subsequent academic period, or the school may not be able to identify the last date of attendance. Many of these commenters believe that the period for paying a refund to the lender should run from the start of the next academic period after that in which the borrower withdraw, as determined under Sec. 82.605(b)(1)(ii). Other commenters urged the Secretary to retain the prior rule, which they read as requiring that a refund to be sent to the lender within 30 days of the date of the school's determination that the student has withdrawn.

Discussion: No change has been made. Current regulations treat the last recorded date of attendance as the dropout date for students who unofficially withdraw. 34 CFR 668.22. Under the prior regulations, with respect to an unofficial withdrawal, a refund was required to be sent within 30 days of the withdrawal date, i.e., the last recorded date of attendance. This date could occur several months before the end of the academic period in which the student ceased attendance. The Secretary does not believe this result is consistent with the administrative practices of many schools in monitoring enrollment status. However, the Secretary continues to be concerned with the length of time a refund remains unpaid, because the Secretary is continuing to pay interest benefits and special allowance on the full outstanding balance of the loan even though the funds are no longer needed by the borrower to pay educational expenses, and because a persistently inflated loan balance increases the risk of default. The Secretary believes that a school cannot be permitted to wait until the beginning of the next academic period to determine which students have unofficially withdrawn and pay their refunds. The Secretary also believes that, once the school has determined that the student has withdrawn, the school should expeditiously process any refund owed, and has therefore revised the regulations to require payment of a refund within 60 days of the date of the school's determination that the student has withdrawn. See Sec. 82.607(c)(2)(iv).

Comments: Several commenters, suggested that the period in which a refund must be paid be extended from 30 up to 60 days. They believe that 30 days from the earlier of the dates specified in Sec. 82.607(c)(1) does not provide sufficient time to allow for unexpected delays in processing refunds (e.g., computer delays, the involvement of more than one office in the refund process, etc.), and that such a timeframe, immediately following the end of an academic period, could create undue administrative burdens.

Discussion: A change has been made. Section 682.607(c) now requires that the school must pay the lender a refund within 60 days of the earlier of the dates specified in Sec. 82.607(c)(1) or, pursuant to Sec. 82.607(c)(2), within 60 days after the last day of an approved leave of absence when the student does not return to school.

Comments: Several commenters questioned how the use of the term "semester" in Sec. 82.607(c)(1)(ii) would apply to schools that do not use semesters.

Discussion: A change has been made. The final regulation uses the term "academic term" to clarify its applicability to quarters and trimesters.

Section 682.610 Records, reports, and inspection requirements for participating schools

Comment: Several commenters pointed out any change in the borrower's surname that the school was aware of would be very useful to the holder of the loan.

Discussion: A change has been made. This section in the final regulation has been revised to require a school to furnish upon request any information it has regarding the borrower's surname.

Comments: One commenter suggested that this provision would be an administrative burden for the school, requiring them to track former students.

Discussion: No change has been made. Nothing in this section requires a school to furnish any more information than it has on hand respecting the last known address, surname, employer and employer address of a borrower who attends or has attended the school.

[FR Doc. 89-13389 Filed 6-1-89; 3:51 pm]

BILLING CODE 4000-01-M

PART 690-PELL GRANT PROGRAM

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690.3 Definitions of payment period.

690.4-690.5 [Removed and Reserved]

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Subpart B-Application Procedures for Determining Expected Family Contribution

690.12 Application.

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Subpart C—Expected Family Contributions for Students With Special Conditions

Sec. 690.31 Special conditions affecting the expected family contribution determination for an independent student.

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Subparts D-E-[Removed and Reserved]

Subpart F-Determination of Pell Grant Awards

690.61 Submission process and deadline for student aid report.

690.62 Calculation of a Pell Grant.

690.63 Calculation of a Pell Grant for a payment period.

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690.65 Transfer student: attendance at more than one institution during an award year.

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Subpart G-Administration of Grant Payments

690.71 Scope.

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690.75 Determination of eligibility for payment.

690.76 Frequency of payment.

690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

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690.79 Recovery of overpayments.

690.80 Recalculation of a Pell Grant award.

690.81 Fiscal control and fund accounting procedures.

690.82 Maintenance and retention of records.

690.83 Submission of reports.

690.94 Audit and examination.

Subpart H-[Removed and Reserved]

AUTHORITY: 20 U.S.C. 1070a through 1070a-6, unless otherwise noted.

Subpart A-Scope, Purpose and General Definitions

SOURCE: 50 FR 10717, Mar. 15, 1985, unless otherwise noted.

Sec. 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

Sec. 690.2 General definitions.

(a) Definitions of the following terms used in this part are described in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Award year
Clock hour
College Work-Study Program
Dependent student
Eligible program
Eligible student
Enrolled

Income Contingent Loan (ICL) Program
Independent student
One-year training program
Parent
Pell Grant Program
Perkins Loan Program
Proprietary institution of higher education
Postsecondary vocational institution
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
State Student Incentive Grant Prgoram
Supplemental Educational Opportunity Grant Program

(b) Other terms used in this part are:

Comparable State income tax return: A State income tax return based on the Federal income tax return which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal income tax return with regard to information being verified.

Disbursement Schedule: A table showing the grant amounts three-quarter and half-time students at term based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary is based on-

(1) A student's Effective Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) A student's attendance costs as defined in section 411F(5) of the HEA; and

(3) The amount of funds available for making Pell Grants.

Enrollment status: Full-time, three-quarter-time, or half-time depending on a student's credit hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

(2) Full-time or part-time depending on a student's credit hour work load per academic year, at an institution that does not use academic terms and measures progress by credit hours.

(3) Full-time or part-time depending on a student's clock hour work load per week at an institution that measures progress by clock hours.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements.

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarter system;

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(3) 24 clock hours per week for an institution using clock hours;

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12}$$

$$\frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Half-time student: (1) Except as provided in paragraph (2), an enrolled student who is carrying a half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

Institution of higher education (Institution): A public or private non-profit or proprietary institution of higher education or a postsecondary vocational institution.

Payment Schedule: A table showing a full-time student's scheduled Pell Grant for a given award year. This table, published annually by the Secretary, is based on-

(1) The student's Expected Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) The student's cost of attendance as defined in section 411F(5) of the HEA; and

(3) The amount of funds available to the Secretary for making Pell Grants.

Pell Grant Electronic Data Exchange: An electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a Student Aid Report for that student which is based on the corrected or verified information.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Student aid index: The term used on the Student Aid Report (SAR) to designate a student's expected family contribution for the Pell Grant Program.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Student Aid Report (SAR) Payment Document: A part of the SAR that is provided to the Secretary by an institution showing an applicant's expected family contribution, cost of attendance, and enrollment status, at that institution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

Valid Student Aid Report: A Student Aid Report—

(a) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(b) For the Pell Grant Electronic Data Exchange, that is signed by the applicant, his or her spouse, and the applicant's parents if the applicant is a dependent student.

(Authority: 20 U.S.C. 1070a, unless otherwise noted)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 41926, Nov. 19, 1986; 51 FR 43161, Nov. 28, 1986]

Sec. 690.3 Definitions of payment period.

(a) Payment period for an institution that has academic terms:

(1) Except as noted in paragraph (a)(2) of this section, for an institution that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) For an institution that uses semesters, trimesters, quarters or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a Pell Grant for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) Payment period for an institution that does not have academic terms: (1) For a student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours); and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(2) For a student whose educational program is more than one academic year, the first and second payment periods must be calculated under paragraph (b)(1) of this section. For subsequent academic years, or fractions of academic years, each payment period must be the period of time in which a student completes—

(i) One-half of the academic year; or

(ii) The remaining hours in the student's educational program, which ever is to be completed first.

(3) For a student whose educational program is less than an academic year—

(i) The first payment period must be the period of time which the student completes the first half of his or her educational program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her educational program.

(4) If an institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a)

Sec. 690.4 and 690.5 [Removed and Reserved]

Sec. 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study.

(c) Except as provided in paragraph (d) of this section, for a student who receives his or her first Pell Grant on or after July 1, 1987, the period of time required to complete his or her undergraduate baccalaureate course of study may not exceed the full-time equivalent of-

(1) Five academic years for an undergraduate degree or certificate program that normally requires four academic years or less of study to complete; or

(2) Six academic years for an undergraduate degree or certificate program that normally requires more than four academic years of study to complete.

(d)(1) The institution a student is attending may waive the limitations contained in paragraph (c) of this section if it determines that the student's failure to complete his or her undergraduate program in the time set forth in that paragraph resulted from an undue hardship caused by-

(i) The death of a relative of the student;

(ii) An injury or illness of the student; or

(iii) Other special circumstances.

(2) The institution must support with appropriate documentation any determination of undue hardship made under this paragraph.

(e) For the purpose of paragraph (c) of this section, any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in determining that student's period of Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

Sec. 690.7 Institutional participation.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant program if it—

(i) Meets the appropriate definition set forth in 34 CFR Part 668, Subpart A;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR Part 668.

(2) If an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant for the paymentperiod during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution before the date the institution became ineligible is paid a Pell Grant for that award year for-

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student, who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar 15, 1985, as amended at 51 FR 43161, Nov. 28, 1986]

Sec. 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which-

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c) Notwithstanding the limitation in paragraph (b)(3) of this section a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to six credits per term.

Under Sec. 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.

(Authority: 20 U.S.C. 1070a)

Sec. 690.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions which apply toward his or her degree or certificate at the first institution may receive Pell

Grant assistance for attendance at both institutions only if there is a written agreement between the institutions.

(1) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's Pell Grant assistance. However, the other institution may determine and pay the student's Pell Grant assistance if the institutions agree in writing to that agreement.

(2) The institution which determines and pays the Pell Grant assistance shall—

(i) Take into account all courses which apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of Pell Grant assistance.

(Authority: 20 U.S.C. 1070a)

Sec. 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely for the institution's cost of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, Perkins Loan, and ICL programs.

(Authority: 20 U.S.C. 1096a)

Sec. 690.11 Pell Grant payments from more than one institution.

A student is not entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution

(Authority: 20 U.S.C. 1070a)

Subpart B-Application Procedures for Determining Expected Family Contribution

SOURCE: 50 FR 10721, Mar. 15, 1985, unless otherwise noted.

Sec. 690.12 Application.

(a) As the first step to receiving a Pell Grant, a student shall apply on an approved form to the Secretary to have his or her expected family contribution determined. A copy of this form is not acceptable.

(b) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(c) A student, and where required the student's parents or spouse, shall provide to the institution or the Secretary a copy of his or her Federal, State, and/or local income tax returns and any other documents, if requested by the Secretary or the institution for verification of the accuracy of the information submitted.

(d) For each award year the Secretary, through publication in the FEDERAL REGISTER, established deadline dates for submitting these applications and making corrections to the information contained in the applications.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0110)

Sec. 690.13 Notification of expected family contribution.

The Secretary sends to each eligible applicant, a "Student Aid Report" (SAR) which states the amount of the applicant's expected family contribution (student aid index) and information used in that calculation. If any of the information is incorrect, an applicant shall correct it according to procedures established by the Secretary through publication in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0132)

Sec. 690.14 Applicant's request for recalculation of expected family contribution because of clerical or arithmetic error, or updating of projected data.

(a) An applicant may request a recalculation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) [Reserved]

(c) A request for recalculation must be made on an approved form and this form must be received by the Secretary no later than the deadline date established by the Secretary through publication in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a)

[50 FR 10721, Mar. 15, 1985, as amended at 51 FR 8954, Mar. 14, 1986]

Subpart C—Expected Family Contributions for Students With Special Conditions

Sec. 690.31 Special conditions affecting the expected family contribution determination for an independent student.

(a) For the 1989-90 award year, an independent student qualifies to have his or her expected family contribution determined using expected income data from 1989 if—

(1) The student was employed full-time in 1988 (at least 35 hours per week for a minimum of 30 weeks during 1988) and is no longer employed full-time;

(2) A spouse whose 1988 income from work must be reported under sections 411F(1) and 411(d)(2) of the Higher Education Act of 1965, as amended (HEA) has lost his or her job and remained unemployed for at least 10 weeks during 1989;

(3) The student or spouse whose 1988 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1989 because of the occurrence in 1988 or 1989 of-

(i) A disability; or

(ii) A natural disaster;

(4) The student or spouse whose income must be reported under sections 411F(1) and 411(d)(2) of the HEA received unemployment compensation or nontaxable income in 1988 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1989 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include welfare and court ordered child support;

(5) The student has become separated or divorced after he or she submitted his or her application;

(6) A spouse whose 1988 income must be reported under sections 411F(1) and 411(d)(2) of the HEA has died after the student has submitted his or her application; or

(7) The student's last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) of the HEA, has died after the student has submitted his or her application.

(b) If an independent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI) as defined in section 411F(1) of the HEA is determined using expected income data from 1989 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 100—436)

Sec. 690.32 Special conditions affecting the expected family contribution determination for a dependent student.

(a) For the 1989-90 award year, a dependent student qualifies to have his or her expected family contribution determined using expected income data from 1989, if—

(1) A parent or stepparent whose 1988 income from work must be reported has lost his or her job and remained unemployed for at least 10 weeks during 1989;

(2) A parent or stepparent whose 1988 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1989 because of the occurrence in 1988 or 1989 of—

(i) A disability, or

(ii) A natural disaster;

(3) A parent or stepparent whose income must be reported under sections 411F(1) and 411(d)(2) received unemployment compensation or nontaxable income in 1988 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1989 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include such items as Social Security benefits, welfare, and court ordered child support;

(4) The parent or parents of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under sections 411F(1) and 411(d)(2) of the HEA for this condition to apply; or

(5) A parent or stepparent whose 1988 income must be reported under section 411F(1) of the HEA has died after the student has submitted his or her application. However, if the parent referred to in this paragraph is the last surviving parent with whom the student had a dependency relation-

ship, by virtue of not meeting the independent student criteria in section 411F(12)(A) the student must file an application under 690.31(a)(7) if he or she wishes to use income data from 1989.

(b) If a dependent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI), as defined in section 411F(1) of the HEA is determined using expected income data from 1989 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 100-436)

[FR Doc. 89-8645 Filed 4-11-89; 8:45 am]

Subpart D-[Removed and Reserved]

Subpart E-[Removed and Reserved]

Subpart F-Determination of Pell Grant Awards

SOURCE: 50 FR 10722, Mar. 15, 1985, unless otherwise noted.

Sec. 690.61 Submission process and deadline for student aid report.

(a) Submission process. (1) Except as provided in paragraph (a)(2) of this section, in order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution may make one disbursement of a student's Pell Grant without a valid SAR if it follows the procedures described in Sec. 690.77.

(3) An institution is entitled to rely on SAR information except under conditions set forth in Sec. 668.14(f) and 668.60.

(b) Student Aid Report deadline.

(1) Except as noted in Sec. 668.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in Sec. 680.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

(Authority: 20 U.S.C. 1070a)

[51 FR 43162, Nov. 28, 1986]

Sec. 690.62 Calculation of a Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) At full funding, no payment may be made to a student if the student's Scheduled Pell Grant is less than $200.

(c) At less-than-full-funding, no payment may be made if—

(1) The student's Scheduled Pell Grant is less than $50; or

(2) The student's Scheduled Pell Grant at full funding would have been less than $200.

(Authority: 20 U.S.C. 1070a (a)(2))

Sec. 690.63 Calculation of a Pell Grant for a payment period.

(a) At an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (part-time students), as appropriate; and

(3)(i) Dividing the amount determined in paragraph (a)(2) of this section by the number of terms in the academic year unless the terms of an institution are not of equal length; or

(ii) If the terms of an institution are not of equal length, multiplying the amount determined in paragraph (a)(2) of this section by the following fraction:

$$\frac{\text{The length of the term in question}}{\text{The length of the academic year}}$$

(b) A single disbursement may not exceed 50 percent of the award determined in paragraph (a)(2) of this section. To ensure this result, an institution shall make multiple disbursements within a term, if that term is longer than half the academic year. Subsequent disbursements within that term may not be made until the student has completed the portion of the term for which he or she was initially paid.

(c) At an institution which measures progress by clock hours or which measures progress by credit hours or units but does not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by—

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by—

$$\frac{\text{The number of credit or clock hours the student is expected to take in a payment period}}{\text{The number of credit or clock hours in an academic year}}$$

(d) Notwithstanding paragraphs (a), (b), and (c) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award year may not exceed his or her Scheduled Pell Grant award for that award year.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Sec. 690.64 Calculation of a Pell Grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period which is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year.

(2) The institution shall determine for each Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant for an award year.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award years, the combined sessions must be treated as one term. A student may not receive more than one term's award for completing any combination of these mini-sessions.

(2) For such mini-sessions, a term-based institution shall determine the student's enrollment status for the entire term. That enrollment status shall be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated; or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(Authority: 20 U.S.C. 1070a)

Sec. 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.19.)

(b) The second institution shall calculate the student's award according to Sec. 690.63.

(c) The second institution may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

(d) If a student's Scheduled Pell Grant at the second institution differs from the Scheduled Pell Grant at the first institution, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the Scheduled Pell Grant at the first institution to determine the percentage of the Scheduled Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Pell Grant at the second institution to which the student is entitled.

(e) The student's Pell Grant for each payment period is calculated according to the procedures in Sec. 690.63 unless the remaining percentage of the Scheduled Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled Pell Grant.

(Authority: 20 U.S.C. 1070a)

[50 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Sec. 690.66 Correspondence study.

A student enrolled in an eligible program of study by correspondence must be paid according to the following procedures:

(a) The institution shall determine the length of each correspondence program it offers by preparing a written schedule for submission of lessons, reflecting a workload of at least 12 hours of preparation per week.

(b)(1) For an institution, if there is not a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant;

and

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) An academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year, or program if the program is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (b)(1)(ii) of this section after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the academic year, or for the program if the program is less than an academic year.

(4) The institution shall make the final payment for the second payment period after the student has submitted 75 percent of the lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(c)(1) For an institution, if there is a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant, and;

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) The non-residential portion of an academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year or the non-residential portion of the program if it is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or non-residential portion of the program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (c)(1)(ii) of this section after he or she has submitted 25 percent of the non-residential lessons or otherwise completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment (for the non-residential portion of the program) for the second payment period after the student has submitted 75 percent of the non-residential lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(5) A student's Pell Grant disbursement for the residential portion of the program is calculated according to the procedures in Sec. 690.63(c) for a student enrolled in a regular course of study at an institution that measures progress by clock hours.

(Authority: 20 U.S.C. 1070a)

[51 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Subpart G-Administration of Grant Payments

SOURCE: 50 FR 10724, Mar. 15, 1985, unless otherwise noted.

Sec. 690.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that it may calculate and pay Pell Grant awards to students.

(Authority: 20 U.S.C. 1070a)

Sec. 690.72 Institutional participation agreement.

(a) The Secretary may enter into an agreement with an institution of higher education under which it will calculate and pay Pell Grant awards to its students. This agreement is on a standard form provided by the Secretary which contains the necessary terms to carry out this part.

(b) The Secretary sends Payment and Disbursement Schedules for each award year to an institution that has entered into an agreement under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

EDITORIAL NOTE: Information collection requirements contained in Sec. 690.72 will become effective after approval by the Office of Management and Budget.

Sec. 690.73 Termination of institutional participation agreement.

(a) Termination by the Secretary. The secretary may terminate the agreement with an institution by giving the institution—

(1) 30 days written notice; or

(2) Less than 30 days written notice if shorter notice is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) Information required. An institution shall provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SAR to the institution before the termination date.

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year.

(4) An accounting of Pell Grant expenditures to the

date of termination.

(c) Termination by the institution. An institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution shall carry out the agreement for the remainder of that award year.

(d) Termination because of a change in ownership which results in a change of control. The agreement automatically terminates when an institution changes ownership which results in a change of control. The Secretary may enter into an agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Sec. 690.74 Provision of funds to institutions.

The Secretary provides funds to an institution for each award year in advance or by way of reimbursement during the course of that year, based on the Secretary's determination of the institution's need for funds to pay Pell Grants or its needs for reimbursement for Pell Grants already paid.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Sec. 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as an eligible student under 34 CFR 668.7;

(2) Is enrolled as at least a half-time undergraduate student; and

(3) Has completed required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order-

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a)

Sec. 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a)

Sec. 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

(a) An institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution-

(1) Receives a student's application information;

(2) Does not have documentation that indicates that the application information is inaccurate; and

(3) Receives an SAI—

(i) From the Secretary; or

(ii) Beginning with the 1988-89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary.

(b) If an institution receives a student's application information and his or her SAI from the Secretary or, beginning with the 1988-89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Resolves the inconsistencies between its documentation and the student's application information;

(2) Recalculates the student's SAI based on correct information;

(3) Makes the disbursement of the student's Pell Grant for the first payment period based on the recalculated SAI; and

(4) Reports the changes in the student's application information and the recalculated SAI to the Secretary within deadline established by the Secretary.

(c)(1) If an institution chooses to make a disbursement under paragraph (a) or (b) of this section, it shall be liable for that disbursement if it does not receive a valid SAR for the student for that award year.

(2) If an institution chooses to make a disbursement under paragraph (b) of this section, the institution and the student shall be liable for any overpayment caused by an incorrect recalculation of the student's SAI.

(3) If a student receives an overpayment as a result of a disbursement made under paragraph (a) or (b) of this section, the institution shall eliminate the overpayment by following the procedures described in 34 CFR 668.61(a).

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB Control No. 1840-0536)

Sec. 690.78 Method of disbursement-by check or credit to a student's account.

(a)(1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for-

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or here account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is three weeks before the first day of classes of a payment period.

(c) The institution shall return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the Pell Grant award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15 day period, the institution may credit the student's account for any amount owed to the institution for the award year.

(4) A student forfeits the rights to receive the payment if her or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraphs (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Authority: 20 U.S.C. 1070a)

Sec. 690.79 Recovery of overpayments.

(a)(1) The student is liable for any Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers to a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible, for further Title IV student financial assistance for attendance at that institution until final resolution of the overpayment.

(Authority: 20 U.S.C. 1070a)

Sec. 690.80 Recalculation of a Pell Grant award.

(a) Change in expected family contribution. (1) The institution shall recalculate a Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under Sec. 690.14;

(ii) Extraordinary circumstances which affect the expected family contribution under Sec. 690.39 or Sec. 690.48; or

(iii) A correction based on information required in Sec. 690.12 or Sec. 690.77.

(2) Except as described in Sec. 690.77(f)(1), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made-

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) Change in enrollment status. (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) Change in cost of attendance. If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(Authority: 20 U.S.C. 1070a)

Sec. 690.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution shall notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice must be given by including in the name of each such account that Federal funds are deposited therein.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay Pell Grants to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1070a)

(Approved by OBM under control number 1840-0536)

Sec. 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) which include the fiscal and accounting records that are required under Sec. 690.81, records required for audits in 34 CFR 668.23, the Student Aid Report of each student applying for a Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution;

(2) The name and social security number of and the amount paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's cost of attendance;

(6) How each student's full or part-time enrollment status was determined; and

(7) Each student's enrollment period.

(b)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for five years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(c) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microform copies in lieu of original records in meeting the requirements of this section.

(Authority: 20 U.S.C. 1070a, 1232f)

(Approved by the Office of Management and Budget under control number 1840-0132)

Sec. 690.83 Submission of reports.

(a) An institution shall submit to the Secretary all SAR Payment Documents for a given award year by December 31 following the end of that award year.

(b) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0132)

Sec. 690.84 Audit and examination.

(a) Federal audits. The institution shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in Sec. 690.81 and Sec. 690.82 and to any other pertinent books, documents, papers, and records.

(b) Non-Federal audits. (1) The institution shall have a financial and compliance audit of Pell Grant Program transactions. The audit must be conducted by an independent auditor in accordance with the general standards and the standards of the financial and compliance audits in the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. Procedures for audits are contained in audit guides developed by, and available from the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's standards.

(2) The audit must be completed not less frequently than once every two years, and be submitted to the Secretary within 9 months of the end of the audit period. Each audit must cover the institution's activities for the entire period since the preceding audit.

(3) The institution must have an audit performed at least once every two years.

(c) Submission and access. The institution shall submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It shall give the Audit Agency and the Secretary access to records or other documents necessary to the audit's review.

(Authority: 20 U.S.C. 1070a)

Subpart H-[Removed and Reserved]

PART 692-STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A-General

Sec.

692.1 What is the State Student Incentive Grant Program?

692.2 Who is eligible to participate in the State Student Incentive Grant Program?

692.3 What regulations apply to the State Student Incentive Grant Program?

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Subpart B-What Is the Amount of Assistance and How May It Be Used?

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692.11 For what purposes may a State use its payments under this program?

Subpart C-How Does a State Apply To Participate In This Program?

692.20 What must a State do to receive an allotment under this program?

692.21 What requirements must be met by a State program?

Subpart D-How Does a State Administer Its Community Service-Learning Job Program?

692.30 How does a State administer its community service-learning job program?

Subpart E-How Does a State Select Students Under This Program?

692.40 What are the requirements for student eligibility?

692.41 What standards may a State use to determine substantial financial need?

Authority: 20 U.S.C 1070c-1070c-1070c-4 1070c-4, unless otherwise noted.

Subpart A-General

Sec. 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States in providing grants and work-study assistance to eligible students who attend institutions of higher education and have substantial financial need. The work-study assistance is provided throug campus-based community service work learning study programs, hereinafter referred to as community service-learning job programs.

(Authority: 20 U.S.C. 1070c-1070c-4)

Sec. 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(A) State participation.

A State that meets the requirements in Sec. 692.20 and 692.21 is eligible to receive payments under this program.

(b) Student participation.

A student must meet the requirements of Sec. 692.40 to be eligible to receive assistance from a State under this program.

(Authority: 20 U.S.C. 1070c-1)

Sec. 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The regulations in this Part 692.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants) except for Subpart G, Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(c) The regulations in 34 CFR Part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(d) The Student Assistance General Provisions in Subpart A of 34 CFR Part 668.

(Authority: 20 U.S.C. 1070c)

Sec. 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) Definitions in 34 CFR Part 668. The following terms used in this part are defined in 34 CFR Part 668:

Academic year (Sec. 668.2).

Campus-based programs (Sec. 668.2).

Enrolled (Sec. 668.2).

Guaranteed Student Loan Program (Sec. 668.2).

HEA (Sec. 668.2).

Income Contingent Loan Program (Sec. 668.2).

Pell Grant Program (Sec. 668.2).

PLUS Program (Sec. 668.2).

Public or private nonprofit institution of higher education (Sec. 668.3).

Postsecondary vocational institution (Sec. 668.5).

Secretary (Sec. 668.2).

State (Sec. 668.2).

(b) Other definitions that apply to this part. The following additional definitions apply to this part:

"Full-time student" means a student carrying a full-time academic workload-other than by correspondence-as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

"Nonprofit" has the same meaning under this part as the same term defined in 34 CFR 77.1 of EDGAR.

(Authority: 20 U.S.C. 1070c-1070c-4)

Subpart B-What Is the Amount of Assistance and How May It Be Used?

Sec. 692.10 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the SSIG program an amount which bears the same ratio to the Federal SSIG funds appropriated as the number of students in that State who are "deemed eligible" to participate in the State's SSIG program bears to the total number of students in all States who are "deemed eligible" to participate in the SSIG program, except that no State may receive less than it received in fiscal year 1979.

(2) If the Federal SSIG funds appropriated for a fiscal year are not sufficient to allot to each State the amount of Federal SSIG funds it received in fiscal year 1979, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal SSIG funds appropriated as the amount of Federal SSI funds that State received in fiscal year 1979 bears to the amount of Federal SSIG funds all States received in fiscal year 1979.

(b) For the purpose of paragraph (a)(1) of this section, a student is "deemed eligible" to participate in a State's SSIG program if the student is in attendance at an institution that is eligible to participate in the State's program.

(Authority: 20 U.S.C. 1070c)

Sec. 692.11 For what purposes may a State use its payments under the program?

A State may use the funds it receives under this part only to make grants to students and to pay wages or salaries to students in community service-learning jobs.

(Authority: 20 U.S.C. 1070c)

Subpart C-How Does a State Apply To Participate In This Program?

Sec. 692.20 What must a State do to receive an allotment under this program?

(a) To participate in the State Student Incentive Grant Program, a State shall enter into an agreement with the Secretary under section 1203 of the HEA (Federal-State Relationship Agreement).

(b) For each fiscal year that it wishes to participate, a State shall submit an application that contains information that shows that its State Student Incentive Grant Program meets the requirements of Sec. 692.21.

(c)(1) Except as provided in paragraph (c)(2) of this section, the State shall submit its application through the State agency designated in its Federal-State Relationship Agreement to administer its State Student Incentive Grant Program as of July 1, 1985.

(2) If the Governor of the State so designates, and notifies the Secretary through a modification to the State's Federal-State Relationship Agreement, the State may submit its application under paragraph (b) of this section through an agency that did not administer its State Student Incentive Grant Program as of July 1, 1985.

(Authority: 20 U.S.C. 1070c-2(a))

(Cross-reference: See 34 CFR Part 604, Federal-State Relationship Agreements)

(Approved by the Office of Management and Budget under control number 1840-0544)

Sec. 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that-

(a) Is administered by a single State agency in accordance with the Federal-State Relationship Agreement under section 1203 of the HEA.

(b) Provides assistance only to students who meet the eligibility requirements in Sec. 602.40;

(c) Provides that assistance under this program to a full-time student will not be more than $2,500 for each academic year;

(d) Provides for the selection of students to receive assistance on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves.

(Cross-reference: See Sec. 692.41.)

(e) Provides that all public or private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate unless that participation is in violation of-

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978;

(f) Provides that, if a State allocates funds to an institution under a formula which is based in part on the financial need of less-than-full-time students enrolled in the institution, a reasonable portion of the institution's allocation must be awarded to those students;

(g) Provides that-

(1) The State will pay an amount for grants and work-study jobs under this part for each fiscal year that is not less than the payment to the State under this part for that fiscal year; and

(2) The amount that the State expends during a fiscal year for grants and work-study jobs under this program represents an additional amount for grants and work-study jobs for students attending institutions of higher education over the amount expended by the State for those activities during the fiscal year two years prior to the fiscal year in which the State first received funds under this program;

(h) Provides for State expenditures under the State program of an amount that is not less than-

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years; and

(i) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(Authority: 20 U.S.C. 1070c-2)

(Approved by the Office of Management and Budget under control number 1840-0544)

Subpart D-How Does a State Administer Its Community Service-Learning Job Program?

Sec. 692.30 How does a State administer its community service-learning job program?

(a)(1) Each year, a State may use up to 20 percent of its allotment for a community service-learning job program that satisfies the conditions set forth in paragraph (b) of this section.

(2) A student who receives assistance under this section must receive compensation for work and not a grant.

(b)(1) The community service-learning job program must be administered by institutions of higher education in the State.

(2) Each student employed under the program must be employed in work in the public interest by an institution itself or by a Federal, State, or local public agency or a private nonprofit organization under an arrangement between the institution and the agency or organization.

(c) Each community service-learning job must-

(1) Provide community service as described in paragraph (d) of this section;

(2) Provide participating students community service-learning opportunities related to their educational or vocational programs or goals;

(3) Not result in the displacement of employed workers or impair existing contracts for services;

(4) Be governed by conditions of employment that are considered appropriate and reasonable, based on such factors as type of work performed, geographical region, and proficiency of the employee;

(5) Not involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; and

(6) Not pay any wage to a student that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938.

(d) For the purpose of paragraph (c)(1) of this section, "community service" means direct service, planning, or applied research that is-

(1) Identified by an institution of higher education through formal or informal consultation with local nonprofit, governmental, and community-based organizations; and

(2) Designed to improve the quality of life for residents of the community served, particularly low-income residents, in such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

(e) For the purpose of paragraph (d)(2) of this section, "low-income residents" means-

(1) Residents whose taxable family income for the year before the year in which they are scheduled to receive assistance under this part did not exceed 150 percent of the amount equal to the poverty level determined by using criteria of poverty established by the United States Census Bureau; or (2) Residents who are considered low-income residents by the State.

(2) Residents who are considered low-income residents by the State.

(Authority: 20 U.S.C. 1070c-2, 1070-4)

Subpart E-How Does a State Select Students Under This Program?

Sec. 692.40 What are the requirements for student eligibility?

To be eligible for assistance, a student must-

(a) Meet the relevant eligibility requirements contained in 34 CFR 668.7; and

(b) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary.

[Authority: 20 U.S.C. 1070c-2, 1091]

(Approved by the Office of Management and Budget under control number 1840-0544.)

Sec. 692.41 What standards may a State use to determine substantial financial need?

A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use-

(a) A system for determining a student's financial need under the Pell Grant, Guaranteed Student Loan, PLUS, or campus-based programs;

(b) The State's own needs analysis system if approved by the Secretary; or

(c) A combination of these systems, if approved by the Secretary.

(Authority: 20 U.S.C. 1070c-2.)

[FR Doc. 87-27317 Filed 11-25-87; 8:45 am]

☆ U.S. GOVERNMENT PRINTING OFFICE: 1990 — 255 - 751 01194